SUPREME COURT OF THE UNITED STATES

No. ~~201~~. 88.

JOSEPH F. FLORENTINE, PLAINTIFF IN ERROR,

vs.

WILLIAM C. H. BARTON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

GOVERNMENT PRINTING OFFICE.

SUPREME COURT OF THE UNITED STATES

No. 201.

JOSEPH F. FLORENTINE, PLAINTIFF IN ERROR,

vs.

WILLIAM C. H. BARTON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

INDEX.

	Original.	Print.
Pleas	1	1
Declaration	2	1
Defendant's plea	7	3
Verdict	9	4
Judgment	9	5
Judgment vacated	11	5
Verdict	13	6
Judgment	13	6
Bill of exceptions	14	7
Copy of writ of error	41	21
Bond for costs	42	22
Copy of citation and service	44	22
Clerk's certificate	45	23
Assigoment of errors	46	23

1 Pleas in the circuit court of the United States of America for the northern district of Illinois, held at the city of Chicago, in the district aforesaid, before the Hon. Thomas Drummond, district judge of said district, on Tuesday, the tenth day of July, in the July term of said court, in the year of our Lord one thousand eight hundred and sixty-two, and our independence the eighty-seventh year.

WM. H. BRADLEY, *Clerk.*

JOSEPH F. FLORENTINE
vs.
WILLIAM C. H. BARTON.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Joseph F. Florentine, plaintiff in this suit, who is a citizen of the State of New York, puts in his place Messrs. Williams, Grimshaw & Williams, his attorneys, against William C. H. Barton, defendant in this suit, who is a citizen of the State of Illinois, in a plea of
2 trespass and ejectment.

William C. H. Barton, defendant in this suit, puts in his place N. H. Purple, and Manning and Merriman, his attorneys, at the suit of said plaintiff in the plea aforesaid.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that on this day, to wit, the sixth day of July, in the year of our Lord one thousand eight hundred and fifty-seven, came said plaintiff, by his attorneys, and filed in the office of the clerk of the circuit court of the United States of America for the northern district of Illinois, at Chicago, in the district aforesaid, his declaration in ejectment against said defendant, together with a notice, bond for costs, and affidavit attached to said declaration. Which said declaration, notice, bond, and affidavit are in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Northern District of Illinois:

United States circuit court, July term, A. D. 1857.

William C. H. Barton, who is a citizen of the State of Illi-
3 nois, summoned to answer unto Joseph F. Florentine, who is citizen of the State of New York, of a plea of trespass and ejectment: For that whereas, heretofore, to wit, on the 28th day of May, in the year of our Lord one thousand eight hundred and fifty-seven, at and within the county of Peoria and State of Illinois, the said plaintiff was possessed as of his own demesne, in fee simple, of

a certain tract of land, situate and within the said county and State, and known as the southeast quarter of section twenty-five, (25,) township eight north, range seven (7) east, of the fourth principal meridian, in Peoria county and northern district of Illinois, which land exceeds in value five hundred dollars; and the said plaintiff, being then and there so possessed of said premises, he, the said defendant, there afterwards, to wit, on the day and year aforesaid, entered into the said described premises, and from the time last aforesaid has unlawfully withheld, and does now unlawfully withhold, from the said plaintiff the possession of the said premises, to the damage of the said plaintiff the sum of one hundred dollars, and therefore he brings suit, &c.

WILLIAMS, GRIMSHAW & WILLIAMS,
Attorneys for Plaintiff.

4 *To Mr. William C. H. Barton:*

You are hereby notified that the declaration, with a copy of which you are now herewith served, and to which this notice is subjoined, will be filed in the circuit court of the United States for the northern district of Illinois, on the fifth day of the July term thereof. A. D. 1857, and that upon filing the same a rule will be entered requiring you to appear and plead to the said declaration within twenty days after the entry of said rule, and that if you neglect so to appear and plead a judgment by default will be entered against you, and the plaintiff will recover possession of the premises specified in the said declaration.

Dated this 28th day of May, A. D. 1857.

WILLIAMS, GRIMSHAW & WILLIAMS,
Attorneys for Plaintiff.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

Circuit court term, A. D. 185 .

JOSEPH F. FLORENTINE
vs.
WILLIAM C. H. BARTON. } In ejectment.

I do hereby enter myself security for costs in this cause, and acknowledge myself bound to pay or cause to be paid all
5 costs which may accrue in this action, either to the opposite party or to any of the officers of this court, in pursuance of the laws of this State.

Dated this third day of June, A. D. 1857.

D. J. MOURER.

STATE OF ILLINOIS,
Bureau County, ss:

Circuit court, July term, A. D. 1857.

JOSEPH F. FLORENTINE
vs.
WILLIAM C. H. BARTON. } In ejectment

Abraham C. Monroe, being duly sworn, deposes and says that he did on the twenty-eighth day of May, A. D. 1857, personally serve William C. H. Barton, the defendant in this suit, with a true copy of the declaration hereunto annexed; and also a true copy of the notice in writing to the said declaration subjoined, and likewise hereunto annexed, and further this deponent saith not.

Subscribed and sworn to before me this 27th day of May, A. D. 1857.

EDWARD M. FISHER, *Clerk*. [SEAL.]
By W. O. FISHER, *Deputy Clk*.

Endorsed: Filed July 6th, 1857.

WM. H. BRADLEY, *Clk*.

6 On this day, to wit, the sixth day of July, in the July term, A. D. 1857, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

JOSEPH F. FLORENTINE
vs.
WILLIAM C. H. BARTON, } Ejectment.

Now comes the plaintiff, by Messrs. Williams, Grimshaw & Williams, his attorneys, who file his declaration in ejectment against the defendant, together with a notice thereto attached; and also an affidavit of a due service of a true copy of said declaration and notice upon the defendant; and upon their motion it is ordered by the court that the cause be docketed, and that the defendant be ruled to plead thereto within twenty days, or that his default be entered.

On this day, to wit, the first day of August, A. D. 1857, came said defendant, by his attorneys, and filed his plea in said entitled cause, which said plea is in the words and figures following, to wit:

U. S. circuit court, northern district of Illinois, July term, 1857.

7 JOSEPH F. FLORENTINE
vs.
WILLIAM C. H. BARTON. }

Defendant comes and defends the force and injury when, &c., and says that he is not guilty in manner and form as plaintiff hath above alleged against him, and of this he puts himself upon the country, &c.

MANNING & MERRIMAN,
For Def't.

Endorsed: Filed August 1st, 1857.

WM. H. BRADLEY, *Clk*.

On this day, to wit, the nineteenth day of January, A. D. 1858, in the December term, A. D. 1857, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit :

JOSEPH F. FLORENTINE
vs.
WILLIAM C. H. BARTON. } Ejectment.

On motion of the defendant, by his attorney, leave is granted him by the court to cross-examine the witnesses whose depositions have been taken *de bene esse* on the part of the plaintiff.

8 On this day, to wit, the nineteenth day of July, in the July term, A. D. 1859, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit :

JOSEPH F. FLORENTINE
vs.
WILLIAM C. H. BARTON. } Ejectment.

Now come the parties, by their attorneys, and upon issue joined thereupon come a jury of good and lawful men, to wit : Mark W. Brown, Daniel Beede, Leonard Ashton, William H. Neece, William O. Snell, L. B. Warren, James M. Rusk, L. E. Bullock, V. G. Harbaugh, John M. Brown, Warren Hitt, and G. W. Norton, who were duly elected, tried and sworn, well and truly to try said issue, and after hearing a part of the evidence, the hour of adjournment having arrived, the further hearing is postponed until to-morrow morning.

On the next day, to wit, the twentieth day of July, in the year and term last aforesaid of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit :

9 JOSEPH F. FLORENTINE
vs.
WILLIAM C. H. BARTON. } Ejectment.

Now come again the parties, by their attorneys, and now come also the jury heretofore empannelled in this cause, and after proceeding in the trial until the hour of adjournment, without concluding the same, the further trial is postponed until to-morrow morning.

On the next day, to wit, the twenty-first day of July, in the year and term last aforesaid of said court, in the record of the proceedings thereof in said entitled cause is the following entry to wit :

JOSEPH F. FLORENTINE
vs.
WILLIAM C. H. BARTON. } Ejectment.

Now come again the parties, by their attorneys, and now come also the jury heretofore empannelled in this cause, and after proceeding further in the trial, without concluding the same, the hour of adjournment having arrived, the further trial is postponed until to-morrow.

On this day, to wit, the twenty-second day of July, in said July term, A. D. 1859, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

JOSEPH F. FLORENTINE
vs.
WILLIAM C. H. BARTON. } Ejectment.

Now come again the parties, by their attorneys, and now come also the jury heretofore empannelled in this cause, and after concluding the evidence and hearing the arguments of counsel, and receiving instructions from the court, the jury returned into court the following verdict, to wit:

We, the jury, find the defendant not guilty. It is thereupon considered and adjudged by the court that the defendant be dismissed and go hence without day, and that he have and recover of the plaintiff his costs by him about his defence in this behalf expended, amounting to the sum of thirty-three dollars and twenty cents, and that he have execution therefor.

10 On this day, to wit, the fourteenth day of July, A. D. 1860, came said parties, by their attorneys, and filed their stipulation in said entitled cause, which said stipulation is in the words and figures following, to wit:

JOSEPH F. FLORENTINE
vs.
WILLIAM C. H. BARTON. } Ejectment.

Judgment rendered in favor of defendant at July term, A. D. 1859. It is hereby agreed that the judgment in said cause be set aside and vacated, and that said cause be reinstated on the docket and stand for trial as if no judgment had been rendered therein.

July 11, 1860.

MANNING & MERRYMAN,
For Def't.

WILLIAMS,
Att'y for Pl'tiff.

Endorsed: Filed July 14th, 1860.

WM. H. BRADLEY, *Cl'k.*

On this day, to wit, the fourteenth day of July, in the July term, A. D. 1860, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

11 JOSEPH F. FLORENTINE
vs.
WILLIAM C. H. BARTON. } Ejectment.

On motion it is ordered by the court, as per stipulation filed, that the judgment entered herein on the twenty-second day of July last be set aside and vacated, the cause reinstated upon the docket, and a new trial of the same awarded.

On this day, to wit, the first day of August, in the July term, A. D. 1861, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

JOSEPH F. FLORENTINE
vs.
WILLIAM C. H. BARTON. } Ejectment.

Now come the parties, by their attorneys, and upon issue joined come a jury of good and lawful men, to wit: William E. Johnson, L. F. Leal, Evans Blake, Charles McDonald, H. F. Dodd, Charles Finn, D. A. Foot, J. R. Howlet, William Lock, George King, Samuel R. Clark, and James Malcolm, and after hearing part of the evidence until the hour of adjournment arrived, the further hearing of this cause is postponed until to-morrow morning.

12 On the next day, to wit, the second day of August, in the year and term last aforesaid of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

JOSEPH F. FLORENTINE
v.
WILLIAM C. H. BARTON. } Ejectment.

Now come again the parties, by their attorneys, and come also the jury in this behalf, and after making some further progress in the trial, the further trial is postponed to a future day.

On this day, to wit, the tenth day of July, in the July term, A. D. 1862, of said court, in the record of the proceedings of said court in said entitled cause is the following entry, to wit:

JOSEPH F. FLORENTINE
vs.
WILLIAM C. H. BARTON. } Ejectment.

Now come the parties, by their respective attorneys, and this cause having been heretofore, to wit, on the first day of August, A. D. 1861, submitted for trial to a jury, and after a partial trial was postponed to a future day. Now, by agreement and consent, the

13 cause is taken up for trial and withdrawn from that jury empannelled to try it as aforesaid, the parties waiving any irregularity growing out of its partial trial as aforesaid. And now, upon issue joined thereupon, come a jury of good and lawful men, to wit: L. M. Blaisdell, C. C. Royce, J. D. Stevenson, Richard Harvey, D. B. Young, L. H. Bowen, John Brown, W. S. Barnes, William A. Little, H. M. Boggess, Wm. H. Barry, and Andrew Gross, who were duly elected, tried and sworn, and after hearing the evidence and receiving instructions from the court, the jury returned into court the following verdict, to wit: We, the jury, find the defendant not guilty of unlawfully withholding from the possession of the plaintiff the real estate and premises declared on. It is thereupon considered and adjudged by the court that the defendant go hence without day, and that he have and recover of the plaintiff his costs by him about

his defence in this behalf expended, amounting to the sum of fifty-six dollars and fifty cents, and that he have an execution therefor.

On this day, the twelfth day of July, A. D. 1862, the bill of exceptions in said entitled cause was filed in said clerk's office, which said bill of exceptions is in the words and figures following, to wit:

14 JOSEPH F. FLORENTINE }
vs.
WILLIAM C. H. BARTON. }

Be it remembered that on the trial of this cause the parties respectively, to maintain the issue on their respective parts, offered and read in evidence to the jury the following, to wit:

The plaintiff, to maintain the issue on his part, read in evidence to the jury a duplicate patent from the United States, granting the premises in controversy to James Resiquie Resiquie, dated January 3d, 1818. He also offered to read in evidence a duly certified copy of a deed from said Resiquie, conveying said land to Aaron T. Crane, dated January 28, 1818; and to account for the non-production of the original proved to the court, by the affidavit of A. C. Monroe, that said Monroe was employed about three years ago by the heirs of Aaron T. Crane, deceased, to ascertain what lands the said Aaron T. Crane owned in Illinois at the time of his death, and to find and procure the title papers therefor, and to learn the condition of said land, and to take the general charge thereof. That said heirs then informed him that Aaron T. Crane died in the city of St. Louis, Missouri, about the year 1819; that Dr. Stearns, the husband of one of the said heirs had been searching for but could find neither lands nor title papers; that said Monroe soon afterwards commenced
15 searching for them. He went first to St. Louis, Missouri, where he learned that Beck & O'Hara, administrators of the estate of A. T. Crane had died long since, and that their administrators were also dead. He then inquired for the family and relatives of said administrators, and was informed that said Beck had a brother who resided in N. York; that he then called to see him and found that he also was dead, but learned from his widow the residence of another relative, with whom he found some of Aaron Crane's old title papers, but none for the land in controversy; that he made diligent search for said papers wherever he supposed there was any probability they might be found, but could get no trace of them. He then commenced searching the recorders' offices in Illinois, to find what lands said Aaron T. Crane owned in Illinois. He continued this search for about two years before he ascertained what lands he did own in Illinois. He then, as attorney of the heirs of said Aaron T. Crane sold and conveyed said lands to the plaintiff in this suit. Said copy of deed was then read to the jury without further objection.

Powers of attorney.

The plaintiff then read to the jury the following powers of attorney, duly executed and authenticated, to wit:

1st. From John Thomas, Maria A. B. Crane, George N. Stebbins

and Amelia C., his wife, Daniel E. Stearns and Martha D., his wife, and George T. Lyon. Dated Sept. 9, 1856.

2d. From Clara H. Thomas, Maria A. B. Crane, George N. Stebbins and Amelia C., his wife, Daniel E. Stearns and Martha D., his wife, and George T. Lyon. Dated March 16, 1856.

3d. From John C. Rundle and Mary Delia, his wife. Dated Dec. 15, 1856.

16 4th. Edward B. Emmons and Julia F., his wife. Dated Nov. 9, 1856.

All of said powers of attorney were to Abram C. Monroe, and authorized him to sell and convey fifty-two quarter sections of land in Illinois, which they inherited from said Aaron T. Crane, among them the land in controversy in this suit.

Deeds under power of attorney.

He then read to the jury a deed from Maria A. B. Crane, Clara H. Thomas, George N. Stebbins, Amelia C. Stebbins, Daniel E. Stearns, Martha D. Stearns, Edward B. Emmons, Julia F. Emmons, John C. Rundle, Mary D. Rundle, and George T. Lyon, by their said attorney, Abram C. Monroe, to Joseph F. Florentine, conveying to him the land in controversy in this suit.

The plaintiff then proved that Aaron T. Crane died without issue in 1819, at St. Louis, in the State of Missouri, and that the grantors in the last mentioned deed and two or three other persons were his only heirs-at-law; that the said grantors owned by descent seven-eighths of his estate, and have never resided in the State of Illinois; that many of them had been for many years married women; that three of them married previous to 1837.

The plaintiff here closed his case.

17 *Acts of the legislature.*

The defendant, to maintain the issue on his part, read in evidence the original patent from the United States to said Resique, and deed from said Resique to Aaron T. Crane, of which copies were read in evidence by the plaintiff; also an act, entitled "An act for the relief of the representatives of Aaron T. Crane, deceased, approved February 8, 1821," in the words and figures following, to wit: "Whereas Abraham Beck and William M. O'Hara, administrators of Aaron T. Crane, late of the town of St. Louis and Territory of Missouri, deceased, have, by the petition, set forth that the said Aaron T. Crane died intestate, leaving several heirs under the age of twenty-one years; that the said Aaron T. Crane in his lifetime had, by articles of agreement, contracted to sell and convey sundry tracts of land to certain individuals; also setting forth that the said Aaron T. Crane did not leave sufficient personal estate to satisfy and discharge his debts, and that his real estate consisted of lands of small value and of doubtful sale; therefore praying that an act might be passed for their relief therefor.

Sect. 1. Be it enacted by the people of the State of Illinois, represented in the general assembly, that the said Abraham Beck and

William M. O'Hara be, and they are hereby, appointed trustees, full powers to them to execute conveyances pursuant to con... entered into by the said Aaron T. Crane, which conveyances shall be as good and effectual in law as if the same had been executed by the said Aaron T. Crane in his lifetime: provided, always, that such conveyances shall not conclude the heirs of the said Aaron T. Crane unless one of the justices of the supreme court shall endorse
18 on the same respectively a certificate that he is satisfied with the form of such conveyances, and that they are made in pursuance of existing and valid contracts, entered into by the said Aaron T. Crane in his lifetime, of which a specific performance might be decreed by the court of chancery.

Sect. 2. Be it further enacted, that the said trustees, before they enter upon the execution of their said trusts, shall execute a bond to the people of this State, in such penalty and with such surety as one of the justices of the supreme court may direct, conditioned for the true and faithful execution of this trust.

Sect. 3. Be it further enacted, that the said administrators be, and they are hereby, authorized and empowered to sell such part of the real estate of the said Aaron T. Crane, deceased, as they may at any time be ordered to sell by the proper court, for the payment of the debts of the said intestate, and that sale may be made at private sale instead of public sale; anything contained in the thirteenth section of the act entitled, 'An act to regulate administrations and the descent of intestate estates, and for other purposes, approved March 23rd, 1819,' to the contrary notwithstanding; and that the said administrators, upon such sale, may execute conveyances for the same, shall set forth such order at large, and shall be valid and effectual against the heirs and devisees of said intestate, and all claiming by, from, or under him: provided, that before any conveyances are made said sales shall be reported to one of the justices of the supreme court, and be approved by him.

Sect. 4. Be it further enacted, that all moneys arising from
19 the sale of such lands by virtue of this act shall be considered as assets in the hands of the said administrators for the payment of the debts of the said deceased."

He also read an act supplementary to the aforesaid act, approved January 11, 1823, and which is in the words and figures following, to wit:

Sect. 1. Be it enacted by the people of the State of Illinois, represented in the general assembly, that all the power given by the act to which this is a supplement, approved February eight, eighteen hundred and twenty-one, to Abram Beck and William M. O'Hara, as trustees and administrators of Aaron T. Crane, deceased, be, and the same are hereby, extended to the legal administrators of the said Abraham Beck and William M. O'Hara.

Sect. 2. Be it further enacted, that it shall be the duty of the administrators aforesaid to conform to all the requisitions contained in the several sections of the said recited act, and to act in all respects in the same manner as the said Abraham Beck and William M. O'Hara were bound to do under the stipulations of the said act.

Also a transcript from the records of the probate court of the county of Pike and State of Illinois, which, together with the clerk's certificate thereon, is in the words and figures following, to wit:

20 *Probate record.*

At a court of probate, held at Colesgrove, in and for the county of Pike and State of Illinois, on the 5th day of November, in year of our Lord 1821. Present: Nicholas Hansen, judge.

A. Beck.

In the matter of the estate of Abraham Beck, deceased.

On reading and filing the affidavit of Daniel D. Smith and Eli B. Clemson, proving the death of the said Abraham Beck, and also on reading and filing the petition of the said Smith and Clemson, praying to be appointed administrators on the said estate, and it also having been made to appear to the satisfaction of this court that the said deceased had no widow or next of kin in this State. Ordered, that letters of administration on the estate of the said Abraham Beck, deceased, be granted to the said Daniel D. Smith and Eli B. Clemson upon their filing a bond, with sufficient security, in the sum of $500.

On reading and filing the bond of Daniel D. Smith and Eli B. Clemson, administrators, as aforesaid, with Charles W. Hunter and Erastus Brown as their securities in the sum of $500.

Ordered, that the same be approved, and letters of administration are granted to them.

STATE OF ILLINOIS,
Pike County, ss:

The people of the State of Illinois to Daniel D. Smith and Eli B. Clemson, greeting:

21 Whereas Abraham Beck, late of St. Louis, in the State of Missouri, deceased, died intestate, as it is said, therefore full power and authority are hereby given and granted unto the said Daniel D. Smith and Eli B. Clemson to administer all and singular the goods, chattels, and credits of the said deceased wherever they may be found, and to demand, collect, buy, and in a legal manner require and receive all and all manner of debts due and owing to the said deceased, and well and faithfully to dispose of the same according to law; and, lastly, you are hereby constituted and appointed administrators of all and singular the goods, chattels, rights, and credits of the said Abraham Beck, deceased.

In testimony whereof, I, Nicholas Hansen, judge of probate of Pike county, have hereunto set my hand and affixed the seal of the said court, this fifth day of November, in the year of our Lord one thousand eight hundred and twenty one.

N. HANSEN.

[L. S.]

A. T. Crane.

In the matter of the estate of Aaron T. Crane, deceased.

On reading and filing the affidavit of Daniel D. Smith and Eli B. Clemson, proving the death of the said Aaron T. Crane, and also on reading and filing the petition of the said Smith and Clemson, praying to be appointed administrators on the said estate, and it also having been made to appear to the satisfaction of the court that the said deceased had no widow or next of kin in this State, ordered that letters of administration on the estate of the said Aaron T. Crane, deceased, be granted to the said Daniel D. Smith and Eli B.
22 Clemson upon their filing bond, with sufficient security, in the sum of $1,000. On reading and filing the bond of Daniel D. Smith and Eli B. Clemson, administrators as aforesaid, with Charles W. Hunter and Erastus Brown as their securities in the sum of $1,000, ordered that the same be approved, and letters of administration are granted to them.

STATE OF ILLINOIS,
Pike county, ss:

The people of the State of Illinois to Eli B. Clemson and Daniel D. Smith, greeting:

Whereas Aaron T. Crane, late of St. Louis, in the State of Missouri, deceased, died intestate, as it is said, therefore full power and authority are hereby given and granted unto you, the said Eli B. Clemson and Daniel D. Smith, to administer all and singular the goods, chattels, and credits of the said deceased wherever they may be found, and to demand, collect, buy, and in a legal manner require and receive all and all manner of debts due and owing to the said deceased, and well and faithfully to dispose of the same according to law; and lastly, you are hereby constituted and appointed administrators of all and singular the goods, chattels, rights, and credits of the said Aaron T. Crane, deceased.

In testimony whereof I, Nicholas Hansen, judge of probate of Pike county, have hereunto set my hand and affixed the seal of the said court, at Colesgrove, this fifth day of November, in the year of our Lord one thousand eight hundred and twenty-one.

N. HANSEN.

23 *Wm. M. O'Hara.*

In the matters of the estate of William O'Hara, deceased.

On reading and filing the affidavit of Daniel D. Smith and Eli B. Clemson, proving the death of the said William M. O'Hara, deceased, and also on reading and filing the petition of the said Smith and Clemson, praying to be appointed administrators on the said estate, and it also having appeared to the satisfaction of this court that the said deceased had no widow or next of kin in this State.

Ordered that letters of administration on the estate of the said William M. O'Hara, deceased, be granted to the said Daniel D. Smith and Eli B. Clemson, upon their filing a bond, with sufficient security, in the sum of $500.

On reading and filing the bond of Daniel D. Smith and Eli B. Clemson, administrators as aforesaid, with Charles W. Hunter and Erastus Brown, as their securities, in the sum of $500.

Ordered that the same be approved, and letters of administration are granted to them.

STATE OF ILLINOIS,
Pike County, ss:

The people of the State of Illinois to Eli B. Clemson and Daniel D. Smith, greeting:

Whereas William M. O'Hara, late of St. Louis, in the State of Missouri, deceased, died intestate, as it said, therefore full power and authority are hereby given and granted unto you, the said Eli B. Clemson and Daniel D. Smith, to administer all and singular
24 the goods, chattels, and credits of the said deceased, wherever they may be found, and to demand, collect, buy, and in a legal manner require and receive all and all manner of debts due and owing to the said deceased, and well and faithfully to dispose of the same, according to law; and lastly, you are hereby constituted and appointed administrators of all and singular the goods, chattles, rights, and credits of the said William M. O'Hara, deceased.

In testimony whereof I, Nicholas Hansen, judge of probate of Pike county, have hereunto set my hand and affixed the seal of said court, at Colesgrove, this fifth day of November, in the year of our Lord one thousand eight hundred and twenty-one.

N. HANSEN.

Court adjourned until to-morrow morning, 9 o'clock.

N. HANSEN.

STATE OF ILLINOIS,
County of Pike, ss:

I, Strother Grigsby, clerk of the county court within and for said county, do certify that the foregoing seven pages contain a true and perfect copy of the convening order of the court of probate, held at Colesgrove, in the county of Pike, on the fifth day of November, A. D. 1821, and of the orders of said court, appointing Daniel D. Smith and Eli B. Clemson administrators of the estate of Abraham Beck, deceased, and of the letters of administration granted thereon; also of the orders of said court at said term, appointing the said Daniel D. Smith and Eli B. Clemson administrators of the estate of Aaron T. Crane, deceased, and of the letters of administration granted thereon; and also of the orders of said court at said term,
25 appointing the said Daniel D. Smith and Eli B. Clemson administrators of the estate of William M. O'Hara, deceased; and

also of the letters of administration granted thereon, all of which are of record in my office.

Given under my hand and the seal of said court at my office, in Pittsfield, this 30th day of July, A. D. 1858.

STROTHER GRIGSBY, *Clerk*.

The defendant then read in evidence a transcript of the record of the circuit court of the county of Pike and State of Illinois, which, together with the certificate of the clerk of said court, is in the words and figures following, to wit:

Circuit court record.

At a circuit court begun and held at the town of Atlas, within and for the county of Pike, on the first Thursday after the second Monday in the month of October, in the year of our Lord one thousand eight hundred and twenty-three.

Present the Hon. John Reynolds, judge.

On reading and filing the petition of Eli B. Clemson and Daniel D. Smith, administrators of the estates of Abraham Beck, Aaron T. Crane, and William M. O'Hara, deceased, setting forth that the personal property of said deceased is insufficient to pay the debts of said deceased.

It is, therefore, ordered by the court that the said Eli B. Clemson and Daniel D. Smith, administrators as aforesaid, sell the following real estate of said deceased, as set forth in their petition, to wit,

26 three hundred and twenty acres, being the south half of section thirty-two, in township thirteen south, and range one west; also the southeast quarter of section thirty-one, township ten south, and range two west of the fourth principal meridian, all lying and being in the county of Pike and State of Illinois; and also the east half of section twenty-five, in township eight north, range seven east of the fourth principal meridian, in the county of Fulton and said State.

On motion, Nicholas Hansen, esq., of counsel for Eli B. Clemson and Daniel D. Smith, administrators of the several estates of Abraham Beck, Aaron T. Crane, and William M. O'Hara, to amend the order entered of record yesterday, in *in* this case.

It is ordered that the said order be entered, as follows, to wit:

On reading and filing the petition of Eli B. Clemson and Daniel D. Smith, joint administrators of the several estates of Abraham Beck, Aaron T. Crane, and William M. O'Hara, deceased, praying for an order of this court to sell certain parts of the real estate of Aaron T. Crane, deceased, as therein specified, for the purpose of paying his debts, agreeably to a provision of an act of the legislature for the relief of the representatives of said Aaron T. Crane, deceased, passed July 8th, 1821, and an act supplemental thereto, passed January 11th, 1823, extending the same powers and duties to the said Eli B. Clemson and Daniel D. Smith, the legal administrators as aforesaid.

Ordered, That the said Eli B. Clemson and Daniel D. Smith, administrators as aforesaid, sell the following real estate of said de-

ceased set forth in their petition, to wit: Three hundred and twenty acres of land, being the south half of section thirty-two, in township thirteen south and range one west. Also, the southeast quar-
27 ter of section thirty-one, township ten south, and range two west of the fourth principal meridian, all lying and being in the county of Pike, and State of Illinois, and also the east half of section twenty-five, township eight north, range seven east of the fourth principal meridian, in the county of Fulton, and said State.

STATE OF ILLINOIS,
County of Pike, ss:

I, William R. Archer, clerk of the circuit court in and for said county, certify that the foregoing is a true copy of the record of said court in the above entitled proceeding, now remaining of record in my office in volume 1 of circuit court.

Records, pages 37, 39, and 40.

Given under my hand and the seal of said court at my office, in Pittsfield, this 8th day of December, A. D. 1857.

WILLIAM R. ARCHER, *Clerk.*

The defendant then read in evidence, subject to exception, a deed from Eli B. Clemson and Daniel D. Smith, administrators of the estates of Abraham Beck and William M. O'Hara, deceased, and also of the estate of Aaron T. Crane, deceased, to A. Ferris, dated Oct. 17, 1823, which, with the certificates endorsed thereon in the words and figures following, to wit:

28 *Administrator's deed.*

This indenture, made this seventeenth day of October, in the year of our Lord one thousand eight hundred and twenty-three, between Eli B. Clemson and Daniel D. Smith, administrators of the estates of Abraham Beck and William M. O'Hara, deceased, and also of the estates of Aaron T. Crane, deceased, of the first part, and Amos Ferris of the county of Pike and State of Illinois, of the second part, witnesseth, that the said parties of the first part, by virtue of an act of the legislature of the State of Illinois, passed on the 8th day of February, A. D. 1827, and a certain other supplemental act of the legislature aforesaid, passed on the 11th day of January, 1823, and agreeable to an order of the circuit court of the county of Pike and State aforesaid, a copy of which in the words and figures following, to wit:

On reading and filing the petition of Eli B. Clemson and Daniel D. Smith, joint administrators of the several estates of Abraham Beck, William M. O'Hara and Aaron T. Crane, deceased, praying for an order of this court to sell certain parts of the real estates of Aaron T. Crane,, deceased, as therein specified, for the purpose of paying his debts, agreeably to a provision of an act of the legislature for the relief of the representatives of the said Aaron T. Crane, deceased, passed Feb. 8th, 1821, and an act supplemental thereto, passed on the 11th day of January, 1823, extending the same powers and duties

to the said Eli B. Clemson and Daniel D. Smith, the legal administrators aforesaid.

Ordered, that the said Eli B. Clemson and Daniel D. Smith, administrators as aforesaid, sell the following real estate of said deceased, as set forth in their petition, to wit: three hundred and twenty acres of land, being the south half of section thirty-two, in township thirteen south, in range one west; also the southeast quarter of section thirty-one, in township ten south, in range two west of the
29 principal meridian, all lying and being in the county of Pike and State of Illinois; and also the east half of section twenty-five, township eight north, and range seven east of the fourth principal, in the county of Fulton and State aforesaid. And for and in consideration of the sum of sixty-three dollars lawful money of the United States to us in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, have granted, bargains, sold, released and confirmed, and by these presents doth grant, bargain, sell, release and confirm unto the said party of the second part, his heirs, assigns, forever, a certain tract or parcel of land, containing three hundred and twenty acres, being the east half of section twenty-five, in township eight north, and range seven east, in the tract appropriated for military bounties in the Territory, now State of Illinois, in pursuance of acts of Congress passed on and since the sixth day of May, A. D. 1812, being a part and parcel of the above described tracts of land; to have and to hold the said half section of land, with the premises, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, to and for the only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns forever. And in pursuance of the above mentioned acts and order of the circuit court aforesaid, in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, to the half section of land above particularly mentioned and described, and the appurtenances, do by these presents warrant and forever defend.

In witness whereof, the said parties of the first part have hereunto set their hands and affixed their seals the day and date above written.

E. B. CLEMSON, [SEAL.]
DANIEL D. SMITH, [SEAL.]
Administrators.

Signed, sealed and delivered in the presence of—
AMOS BANCROFT,
G. V. DUZEN.

30 STATE OF ILLINOIS,
County of Pike, ss:

Be it remembered, that on the 18th day of October, A. D. 1823, before the subscriber, a justice of the peace in and for the county of Pike, and State of Illinois, came the above named Eli B. Clemson and Daniel D. Smith, administrators aforesaid, and acknowledge the foregoing indenture to be their act and deed, hands and seals, for the

uses and purposes therein named, and desired that the same may be recorded as such, all which is certified according to law.

Given under my hand and seal the day and year first above written.

AMOS BANCROFT, *J. P.* [SEAL.]

On the back of this deed was an indorsement or certificate of John Reynolds, who, at the time, was one of the justices of the supreme court of the State of Illinois; the signature to which certificate was admitted to be in the handwriting of the said John Reynolds, and which is as follows:

STATE OF ILLINOIS,
Pike County, ss:

I, John Reynolds, one of the justices of the supreme court of Illinois, having received the report of the administrators within mentioned of their proceedings in the sale of the premises in this deed mentioned, and after duly investigating and examining into the same, do hereby approve of said sale.

Dated, Atlas, Oct. 18, 1863.

31 N. B.—The judge called upon Nathaniel Hinckley, esq., upon whose oath he was satisfied that the said sale had been properly conducted.

JOHN REYNOLDS.

The defendant then read in evidence various deeds, duly authenticated, conveying the title of the said Amos Ferris to him, the said defendant, and proved that he, said defendant, and those under whom he claimed, had occupied the said premises, claiming under said title, for more than twenty years prior to the commencement of this suit.

The defendant further, to maintain the issue on his part, offered and read in evidence to the jury a certified copy of a record in "the matter of the estate of Aaron T. Crane, dec'd," from the probate court of Pike county, Illinois, in the words and figures following, to wit:

At a court of probate, held at Atlas on the third Monday of November, in the year of our Lord one thousand eight hundred and twenty-five, in and for the county of Pike and State of Illinois.

Present: Geo. W. Hight, judge.

In the matter of the estate of Aaron T. Crane, dec'd.

This day came Eli B. Clemson, administrator of all and singular the goods, chattels, and credits of Aaron T. Crane, deceased, and previous notice having been given agreeable to law, exhibited the following amounts and statements of his administration, viz:

32 DR.—*The estate of Aaron T. Crane, deceased, in account current with Eli B. Clemson, surviving administrator.*

21 Nov., 1825.—To the whole amount of expense account, being marked No. 1, with vouchers filed in the same, from A to E, 5 vouchers	$464 35
To amount of commission on $1,090 50 at 5 per centum, agreeable to law	54 55
To amount of fees paid by said administrator to George W. Hight, esquire, judge of probate	8 62½
	527 52½

Contra.—CR.

21 Nov., 1825.—By amount of sales of real estate in the years 1823, '24, '25, as per statement marked A, and numbered 1, with lists, Nos. 1, 2, and 3, of the land sold filed therein	$1,090 50
Balance bro't down to the credit of said estate of Aaron T. Crane, of which a dividend is now made, as follows:	$562 97½
To the dividend on Eli B. Clemson's claim of $1,138 30, amounting to	$547 00
To the dividend on Roswell B. Fenner's, of $33 11, amounting to	16 00
	563 00

I have received from the estate of Aaron T. Crane, deceased, five hundred and forty-seven, in part payment of my claim against said estate of $1,138 30, and have in my hands, arising from said
33 estate, to be paid to R. B. Fenner, the sum of sixteen dollars, in part payment of said Fenner's claim against said estate of $33 11.

ATLAS, *Nov. 21st*, 1825.

ELI B. CLEMSON,
Administrator.
GEO. W. HIGHT,
Judge.

STATE OF ILLINOIS,
County of Pike, ss:

I, Strother Grigsby, clerk of the county court of said county, do hereby certify the foregoing to be a true copy taken from vol. 1, pages 26 and 27, of the probate records of said county of Pike.

Given under my hand and seal of said court, at my office, in Pittsfield, this 9th day of December, 1857.

[SEAL.] STROTHER GRIGSBY, *Clerk.*

Defendant then read in evidence to the jury the deposition of William Ross, George W. Jones, and Strother Grigsby, in the words and figures following, to wit:

Depositions of witnesses taken on the 29th day of January, A. D. 1861, between the hours of 10 o'clock a. m. and four o'clock p. m., at the office of D. H. Gilmer, in the county of Pike and State of Illinois, by Daniel H. Gilmer, commissioner, and upon the enclosed interrogatories and by virtue of the enclosed commission, to be read in evidence in a certain suit now depending in the circuit court of the United States for the northern district of the State of Illinois, described in said commission and interrogatories, wherein Joseph F. Florentine is the plaintiff, and William C. H. Barton is the
34 defendant.

The deposition of William Ross.

The said William Ross, being first duly sworn, doth depose and say, in answer to the several interrogatories, as follows, to wit:

Question 1. What is your age and residence?

Answer 1. I was sixty-eight years old last April. My residence is in Newburgh, Pike county, Illinois, about one mile east of Pittsfield.

Question 2. If you state that you live in Pike county, Illinois, state how long have you lived in said county.

Answer 2. Upwards of forty years.

Question 3. Do you know whether or not there was a fire in said county of Pike, which destroyed the office of the clerk of the circuit court and of the clerk of the county court of said county, or either of them, and when such fire occurred, and what offices of the offices of the county were destroyed?

Answer 3. There was a fire which burnt the building in which circuit clerk's office and county clerk's office were kept; the record books were saved, some papers lost, and some were destroyed or lost, but I cannot tell what papers were saved and what lost. I can't tell when it was burned exactly, but to the best of my recollection it was between 1828 and 1832.

35 Question 4. If you state that the court-house was destroyed, state whether or not the papers and files in the office of the court of probate of said county, or either, and which were saved from said fire, or were destroyed.

Answer 4. The court-house was not burned, but the offices were kept in a separate building; the greater part of the papers in both offices were saved, but some were lost. I cannot designate which were lost and which were saved. but I think the most important papers were saved.

Question 5th. Do you know of any other matter relating to such fire and the destruction of the papers and records? If so, state fully.

I would state that these offices were kept in hewed log building, in one end of which was a cabinet shop; in the other, the said two offices; and I do not now recollect anything further of importance.

W. ROSS.

STATE OF ILLINOIS,
Pike County, ss:

I, Daniel H. Gilmer, special commissioner, do hereby certify that the said witness, William Ross, prior to taking said deposition, and on the said 29th day of January, A. D. 1861, was by me duly sworn to testify the truth in relation to the matter in controversy
36 in the suit mentioned in the caption of these depositions, and in the enclosed commission, so far as he might be interrogated in relation thereto, and that said deposition was on the 29th day of January, 1861, at my office in said county, taken and reduced to writing by me, and signed and sworn to by the said witness, in my presence.

Given under my hand and seal this 29th day of January, A. D. 1861.

D. H. GILMER, *Com'r.* [SEAL.]

Deposition of Strother Grigsby.

The said Strother Grigsby, being first duly sworn, deposes and says, in answer to the several interrogatories, as follows, to wit:

Question 1. What is your age, name, residence, and occupation?

Answer 1. My name is Strother Grigsby; I am forty-one years old; residence, Pittsfield, Illinois; I am at this time county clerk of the county of Pike and State of Illinois.

Question 2. Are there any papers on file in your possession, as clerk of the county court of said county of Pike, relating to the estate of Aaron T. Crane, filed in your office previous to the year 1825? If so, attach copies of such papers to your deposition.

Answer 2. I have carefully examined the files in my office, and can find no such papers, and believe there is none such in my office.

37 Question 3. Have you or not possession of the records and papers of the probate court of said county?

Answer 3. I have.

Question 4. If you state that there are no files of papers relating to said estate, state, if you know, what has become of them.

Answer 4. I don't know what has become of them.

STROTHER GRIGSBY.

STATE OF ILLINOIS,
Pike County, ss:

I, Daniel H. Gilmer, commissioner, do hereby certify that the said witness, Strother Grigsby, prior to the taking of the said deposition, and on the said 29th day of January, A. D. 1861, was by me duly sworn to testify the truth in relation to the matter in controversy in the suit mentioned in the caption to these depositions, and in the enclosed commission, so far as he might be interrogated in relation thereto, and that the said deposition was, on the 29th day of Janu-

ary, 1861, at my office in said county, taken and reduced to writing by me, and signed and sworn to by said witness in my presence.

Given under my hand and seal this 29th day of January, A. D. 1861.

D. H. GILMER, *Com'r.* [SEAL.]

38 *Deposition of George W. Jones.*

The said George W. Jones, being first duly sworn, deposes and says, in answer to the several interrogatories, as follows, to wit:

Question 1. What is your age, residence, and occupation?

Answer 1. I am thirty-four years old; reside in Pittsfield, Pike county, Illinois; and my occupation is that of clerk of the circuit court of Pike county, Illinois.

Question 2. If you state that you are clerk of the circuit court of Pike county, Illinois, state whether there are any papers on file in said court in the matter of the petition of Eli B. Clemson & ——— Smith, administrators of the estate of Aaron D. Crane, for the sale of real estate; and if so, attach copies of all such papers to this your deposition.

Answer 2. I have made search among the files of my office, and can find no such papers on file.

Question 3. If you state there is no petition or other papers now on file in said clerk's office, state if you know what has become of them.

Answer 3. I do not know.

Question 4. Do you know of any other matter or thing that may be of importance to defendant? If so, state fully.

39 Answer 4. I do not.

GEO. W. JONES.

STATE OF ILLINOIS,
Pike County, ss:

I, Daniel H. Gilmer, commissioner, do hereby certify that the said witness, George W. Jones, prior to taking said deposition, and on the said 29th day of January, A. D. 1861, was by me duly sworn to testify the truth in relation to the matter in controversy in the suit mentioned in the caption of these depositions and in the enclosed commission, so far as he might be interrogated in relation thereto, and that the said deposition was, on the 29th day of January, 1861, at my office, in Pittsfield, in Pike county, Illinois, taken and reduced to writing by me, and signed and sworn to in my presence.

Given under my hand and seal this 29th day of January, A. D. 1861.

D. H. GILMER, [SEAL.]
Commissioner.

Endorsed: Opened for Mr. Merriman, att'y, July 10th, 1861.
W. H. BRADLEY, *Cl'k.*

40 This being all the evidence, the plaintiff, after the defendant had closed his evidence, moved the court to exclude from the jury the said deed from Eli B. Clemson and Daniel B. Smith, administrators, as aforesaid, to the said Amos Ferris, which the court, at the time of said motion, then and there refused to do; and being of the opinion that the defendant had shown in himself a paramount and good title to the premises in dispute, instructed the jury to that effect, (see act of legislature of February second, 1821, eighteen hundred and twenty-one.) To which decisions of the court, in refusing to exclude said deed from the jury, and in instructing the jury, as last aforesaid, said plaintiff, at the times when they were severally made, excepted, and now prays that his bill of exceptions may be signed, sealed, and made a part of the record, which is accordingly done.

The defendant admits that the land in controversy exceeds in value the sum of two thousand dollars.

THOMAS DRUMMOND. [SEAL.]

JULY 12, 1862.

Endorsed: Filed July 12, 1862.

WM. H. BRADLEY, *Cl'k.*

41 On this day, to wit, the twenty-fifth day of September, A. D. 1862, a writ of error was issued out of said clerk's office in said entitled cause, which said writ of error is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

The United States of America to the judges of the circuit court of the United States for the northern district of Illinois, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea, which is in the said court before you, between Joseph F. Florentine and William C. H. Barton, wherein Joseph F. Florentine is the plaintiff, and William C. H. Barton is the defendant, a manifest error hath happened to the great damage of the said Joseph F. Florentine, as by his complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the party aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said
42 Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Hon. Roger B. Taney, chief justice of the Supreme Court of the United States, this twenty-fifth day of Sep-
[SEAL] tember, in the year of our Lord one thousand eight hundred and sixty-two, and of our independence the 87th year.

WM. H. BRADLEY, *Clerk.*

Endorsed: Filed Sept. 25th, 1862.

WM. H. BRADLEY, *Cl'k.*

On the same day, to wit, the twenty-fifth day of September, A. D. 1862, came said plaintiff and filed in said clerk's office his appeal bond in said entitled cause, which said bond is in the words and figures following, to wit:

JOSEPH F. FLORENTINE *vs.* WILLIAM C. H. BARTON. } In error to the circuit court of the United States for the northern district of Illinois, July term, A. D. 1862.

Know all men by these presents that we, Jackson Grimshaw and John H. Williams, of the city of Quincy and State of Illinois, are held and firmly bound unto the above-named William C. H. Barton in the sum of three hundred dollars, to be paid to the said William
43 C. H. Barton, his executors or administrators; to which payment well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors and administrators, firmly by these presents. Sealed with our seals, and dated this 23d day of September, A. D. 1862.

Whereas the above-named Joseph F. Florentine has prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above entitled cause, made in favor of said William C. H. Barton by the said circuit court: Now, therefore, the condition of this obligation is such, that if the above-named Joseph F. Florentine shall prosecute his said writ of error to effect, and answer all costs if he shall fail to make good his plea, then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

JACKSON GRIMSHAW. [SEAL.]
JOHN H. WILLIAMS. [SEAL.]

Approved. THOMAS DRUMMOND.

Endorsed: Filed Sept. 25th, 1862.

WM. H. BRADLEY, *Cl'k.*

44 The citation in said entitled cause is in the words and figures following, to wit:

UNITED STATES OF AMERICA, *ss.*

To William C. H. Barton, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the northern district of Illinois, wherein Joseph F. Florentine is plaintiff

and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Thomas Drummond, one of the justices of said court, this twenty-fifth day of September, A. D. 1862.

THOMAS DRUMMOND.

I hereby acknowledge service of the within writ, this 30th day of September, A. D. 1862, upon me.

A. L. MERRIMAN,
Attorney for Wm. C. H. Barton.

45 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States, within and for the northern district of Illinois, do hereby certify the foregoing to be a true and correct transcript from the record of all the proceedings had in said court in said cause of Joseph F. Florentine against William C. H. Barton, as the same now remain in my custody.

In testimony whereof, I have hereunto set my hand and [SEAL.] affixed the seal of said court at my office in Chicago, in said northern district this twenty-fifth day of November, A. D. 1862.

WM. H. BRADLEY, *Clerk.*

46 JOSEPH F. FLORENTINE, plaintiff in error,
vs.
WILLIAM C. H. BARTON, defendant in error.

Error to circuit court of the United States for northern district of Illinois.

Said plaintiff in error saith that in the foregoing record and proceedings of the circuit court of the United States in and for the northern district of Illinois there is manifest error in this, to wit:

First. The said circuit court erred in refusing to exclude from the jury the said deed from Eli B. Clemson and Daniel D. Smith, administrators of Abraham Beck and William M. O'Hara, deceased, and also administrators of Aaron T. Crane, deceased, to Amos Ferris for the land in controversy on the motion of said plaintiff in error.

Second. The court erred in permitting said deed to be read as evidence to the jury on behalf of defendant in error, against the objections of plaintiff in error to the reading in evidence of said deed.

Third. The court erred in charging and instructing the jury
47 that the said defendant in error had shown in himself paramount and good title to the premises in dispute.

Wherefore, and for divers other errors apparent on the face of said record, said plaintiff in error prays that said judgment be reversed and for nothing esteemed.

JACKSON GRIMSHAW,
Attorney for Plaintiff in Error.

Filed December 8th, 1862.

Supreme Court of the United States,

No.

JOSEPH F. FLORENTINE,

Plaintiff in Error,

vs.

WILLIAM C. H. BARTON,

Defendant in Error.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE NORTHERN DISTRICT OF ILLINOIS.

ARGUMENT FOR PLAINTIFF IN ERROR.

JOSEPH F. FLORENTINE,
Plaintiff in Error,
vs.
WILLIAM C. H. BARTON,
Defendant in Error.

Supreme Court of the United States.

From the Northern District of Illinois.

Argument for Plaintiff in Error.

The plaintiff derived his title to the land in controversy in this case, from the heirs of Aaron T. Crane, deceased. The defendant derived his title through a deed from Eli B. Clemson and Daniel D. Smith, administrators of Abraham Bec , and William M. O'Hara, and Aaron T. Crane, dated and reciting that it was made under an order of the Circuit Court of Pike county, in the State of Illinois, and two acts of the General Assembly of Illinois. The first entitled "An act for the relief of the representatives of Aaron T. Crane, deceased, approved February 8, 1821," is in the words and figures following, to-wit: "Whereas, Abraham Beck and William M. O'Hara, administrators of Aaron T. Crane, late of the town of Saint Louis and Territory of Missouri, deceased, have by their petition set forth that the said Aaron T. Crane died intestate, leaving several heirs under the age of twenty-one years; that the said Aaron T. Crane, in his life-time, had, by articles of agreement, contracted to sell and convey sundry tracts of land to certain individuals. Also setting forth that the said Aaron T. Crane did not leave sufficient personal estate to satisfy and discharge his debts, and that his real estate consisted of lands of small value and of doubtful sale; therefore, praying that an act might be passed for their relief: Therefore,

"SEC. 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That the said Abraham Beck and William M. O'Hara be, and they hereby are appointed trustees, with full powers to them to execute conveyances pursuant to contracts entered into by the said Aaron T. Crane, which conveyances shall be as good and effectual in law, as if the same had been executed by the said Aaron T. Crane in his life time. Provided always, That such conveyances shall not conclude the heirs of the said Aaron T. Crane, unless one of the Justices of the Supreme Court shall endorse on the same respectively a cer-

tificate that he is satisfied with the form of such conveyances, and that they are made in pursuance of existing and valid contracts, entered into by the said Aaron T. Crane in his life time, of which a specific performance might be decreed by the Court of Chancery.

"SEC. 2. Be it further enacted, That the said trustees, before they enter upon the execution of their said trusts, shall execute a bond to the people of this State, in such penalty and with such surety as one of the Justices of the Supreme Court may direct, conditioned for the true and faithful execution of this trust.

"SEC. 3. Be it further enacted, That the said administrators be, and they are hereby authorized and empowered to sell such part of the real estate of the said Aaron T. Crane, deceased, as they may at any time be ordered to sell by the proper Court, for the payment of the debts of the said intestate; and that sale may be made at private sale instead of public sale, anything contained in the thirteenth section of the act, entitled "An act to regulate administrations and the descent of intestates' estates, and for other purposes, approved March 23d, 1819," to the contrary notwithstanding; and that the said administrators, upon such sale, may execute conveyances for the land sold, and the conveyance for the same shall set forth such order at large, and shall be valid and effectual against the heirs and devisees of said intestate, and all claiming by, from, or under him. Provided, That before any conveyances are made, said sales shall be reported to one of the Justices of the Supreme Court, and be approved by him.

"SEC. 4. Be it further enacted, That all moneys arising from the sale of such lands, by virtue of this act, shall be considered as assets in the hands of the said administrators, for the payment of the debts of the said deceased."

The other, entitled "An act, supplemental to an act for the relief of the representatives of Aaron T. Crane, deceased. Approved Jan. 11th, 1823," and is in the words and figures following, to-wit:

"SEC. 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, that all the power given by the act to which this is a supplement, approved February eighth, eighteen hundred and twenty-one, to Abraham Beck and William M. O'Hara, as trustees and administrators of Aaron T. Crane, deceased, be, and the same are hereby extended to the legal administrators of the said Abraham Beck and William M. O'Hara.

"SEC. 2. Be it further enacted, That it shall be the duty of the administrators aforesaid, to conform to all the requisitions contained in the several sections of the said recited act, and to act in all respects in the same manner as the said Abraham Beck and William M. O'Hara were bound to do under the stipulations of the said act."

An act to regulate administrations and the descent of intestates' estates, and for other purposes, approved March 23d, 1819, provides, "That when any executor or administrator, whose testator or intestate shall have died seized of any real estate, shall discover or suspect that the personal estate of such testator or intestate is insufficient to pay his or her debts, such executor or administrator shall, as soon as conveniently may be, make a true and just account of the said personal estate and debts, as far as he or she can discover the same, and deliver the said account to the Court of the County Commissioners of the county in which probate of the will or administration on the estate of any such testator or intestate shall have been had, and request his aid in the premises; and the said Court shall thereupon make an order, directing all persons interested in such estate to appear before them at a certain day and place, in the same order to be specified, not less than six weeks, nor more than ten weeks after the day of making such order, to show cause why so much of the real estate, whereof such testator or intestate died seized, should not be sold, as will be sufficient to pay his or her debts, which order shall immediately thereupon be published for four weeks successively in one or more public newspapers, printed in this State, and the Court shall, at the time and place specified in such order, or at such other time as they may appoint, hear and examine such objections and proofs of such executors or administrators, and of all such other persons interested in such estate as shall think proper to make or offer any, and upon due examination, if the said Court shall find that the personal estate of such testator or intestate is not sufficient to pay his debts, the said Court shall order and direct that the whole, if necessary, if not, then from time to time so much of the real estate of said testator or intestate, then remaining unsold, as will pay his or her debts," &c.

The 13th section of said act provides "That no lands or tenements shall be sold by any such order of the County Commissioners' Court, unless such sale shall be at public vendue, and between the hours of nine in the morning and six in the afternoon of the same day, nor unless the time and place of holding such sale shall have been previously adver-

tised publicly for the space of six weeks successively, by putting up written or printed notice thereof in at least three of the most public places within the township where such lands and tenements shall be sold; and also by causing a similar notice thereof to be published in one of the newspapers printed in the State, nor unless such lands and tenements shall have been described in the advertisements of sale, with common certainty, by setting forth the number of the lot and name of the township in which the same are situate," &c.

An act to authorize executors and administrators to sell real estate in certain cases, authorizes the Circuit Court of the county in which administration shall have been granted, to order the sale of real estate on precisely the terms and conditions stated above, except in lieu of the first order, to be made by the County Commissioners' Court, and which was to be published, &c., the executor or administrator was to give at least thirty days notice of the time aud place of presenting said petition, by serving a written notice of the same, together with a copy of the account and petition, on each of the heirs or devisees of said testator or intestate, or by publishing a notice in the nearest public newspaper for three weeks successively, commencing at least six weeks before the presenting of said petition, &c. The 3d section of this act is a copy of the 13th section of the foregoing act. The 5th section of this act requires the Court to appoint guardians *ad litem* for infant heirs, devisees, &c.

The order of Court offered and read in evidence was made at the Term, 1823, of the Circuit Court of Pike county, Illinois, and recites simply that upon reading and filing the petition of Eli B. Clemson and Daniel D. Smith, administrators of Abraham Beck and Wm. M. O'Hara, and Aaron T. Crane, praying for the sale of real estate to pay debts, &c., it is ordered that they be authorized to sell, &c., the land in controversy in this suit, together with other tracts. There is no recital that notice was given, or any proof offered, or that it appeared that the estate was indebted; nor was there any proof offered that any claims had ever been allowed by the probate court against the estate of Aaron T. Crane, or that the estate was indebted. The conveyance was made in less than ten days after the making of the order. The only question made in this case, was whether that deed conveyed the title of Aaron T. Crane. The Court below decided that it did, and that decision is assigned here for error.

It is not pretended that the deed tested by the general standing laws of the State is valid, and sufficient to convey

any title whatever, but it is insisted that, under the two special acts recited above, it is valid, and sufficient to convey the title of Aaron T. Crane.

I propose to consider first the validity of those special acts.

Upon the death of Aaron T. Crane, his lands descended to and vested in his heirs, charged, it is true, with a lien for the payment of his debts, if indeed he owed any debts.

They were, like every other owner of land, under the protection of the constitution and laws of the State, until they were deprived of them by the law of the land.

It is not intended to discuss the methods by which the legislature may authorize heirs to be deprived of their land, or to deny the power of the legislature, by law, to authorize an administrator, without order of court, to sell the real as well as the personal estate of his decedent for the payment of his debts; but it is denied that the legislature can confer such authority in any other way than by the passage of a law; much less can they, without law, authorize it to be done in violation of the standing general laws of the State. It ought to be regarded as a political axiom, that every person is alike entitled to the protection of the general laws of the State, and that no one individual in the State could be deprived of that protection, by one or all the departments of the goverment, whilst those laws remain in force for every other individual in the State.

It is our boast, that we live and hold our rights under equal laws. But this is an idle boast, if there is a power in the government by a special interposition to suspend the operation of those laws in their application to any one individual. We would then hold our rights under the protection of laws so far as the legislature or government chose to let us, and no longer.

It is incumbent upon those who claim for the legislature such power, to show how they came by it.

Those who claim for the legislature this power, instead of searching for the grant of it in the constitution, which creates the legislature, and limits and defines its power, generally derive it from the supposed inherent sovereignty of the legislature. This notion of legislative sovereignty, though repudiated theoretically by most American jurists and judges, yet practically exercises a powerful influence in the decision of questions touching the validity of legislative acts—an influence dangerous alike to constitutional liberty and the security of individual rights. But for this influence, it is confidently believed that no enlightened American jurist of the

present day would claim for the legislature this power.

Our laws and institutions have for their basis the English common law. We read and study English more than we do American books, and are in the habit of forming our notions of constitutional law more upon the theory of the English constitution, as defined by Coke and Blackstone, than upon the American constitutions. It is in this way that our best American legal commentators adopt, without question, Blackstone's definition of municipal law, which is strictly true upon the English theory of the omnipotence of Parliament; or the other idea, that there must reside somewhere in all governments a supreme, unlimited and despotic power.

But it is wholly untrue, upon our American principle, that sovereignty resides only in the people, and that government has only such limited power as is delegated to it by the people in a written constitution. In England, the Parliament is the sovereign or supreme power, and as it prescribes the law, it is prescribed by the Supreme power of the State. But in America, where the supreme power resides in the people, the only law prescribed by the supreme power is the constitutions. All other laws are prescribed by the legislature, which, so far from having supreme, has only a limited legislative authority. The importance of this subject, if it does not require, will at least justify a reference to the opinions of a few enlightened American judges.

In the case of Gaines et. al. vs. Buford, 1 Dana, 499, Judge Underwood, after deciding an act of the Kentucky legislature, which forfeited lands to the commonwealth, and then gave them to the occupant, unless the owner, in a given time after the passage of the act, should make certain improvements on them, to be unconstitutional, says: "I shall notice one idea more in defence of this act, and only one. It is the appeal made in the preamble to the *sovereign power of the State*. I do not admit that there is any *sovereign power*, in the literal meaning of the terms, to be found anywhere in our system of government. The people possess, as it regards their governments, a *revolutionary sovereign* power: but so long as the governments remain, which they have instituted to establish justice, and to secure the enjoyment of the right of life, liberty and property, and of pursuing happiness, *sovereign power*, or, which I take to be the same thing, *power without limitation*, is no where to be found in any branch or department of the government, either state or national; nor indeed in all of them put together. The constitution of the United States expressly forbids the passage of a bill of at-

tainder, or *ex post facto law*, or the granting any title of nobility, by the general or State governments. The same instrument likewise limits the powers of the general government to those expressly granted, and places many other restrictions upon the power of the State governments. The constitutions of the different States likewise contain many prohibitions and limitations of power. The tenth article of our State constitution, consisting of twenty-eight sections, is made up of restrictions and prohibitions upon legislative and judicial power, and concludes with the emphatic declaration, that 'everything in this article is excepted out of the general powers of government, and shall forever remain inviolate;' and that 'all laws contrary thereto, or contrary to this constitution, shall be void.' These numerous limitations and restrictions prove that the idea of *sovereignty in government* was not tolerated by the wise founders of our systems. *Sovereign State* are cabilistic words, not understood by the disciple of liberty, who has been instructed in our constitutional schools. It is an appropriate phrase when applied to an absolute despotism. I firmly believe, that the idea of sovereign power in the government of a republic is incompatible with the existence and permanent foundation of civil liberty, and the rights of property. The history of man, in all ages, has shown the necessity of the strongest checks upon power, whether it be exercised by one man, a few, or many. Our revolution broke up the foundation of sovereignty in government, and our written constitutions have carefully guarded against the baneful influence of such an idea henceforth and forever. I cannot, therefore, recognize the appeal to the sovereignty of the State, as a justification of the act in question."

In Holden vs. James, 11 Mass., 404, the Court, speaking of the power to suspend laws, or to dispense with their operation, says: "There is an implied reservation of authority in the Parliament to exercise the power here mentioned; because, according to the theory of the English constitution, 'that aboslute despotic power which must in all governments reside somewhere,' is entrusted to the Parliament.

"The principles of our government are widely different in this particular. Here the sovereignty and absolute power resides in the people, and the legislature can only exercise what is delegated to them according to the constitution. It is obvious that the exercise of the power in question would be equally oppressive to the subject, and subversive of his right to protection, 'according to standing laws,' whether exercised by one man, or by a number of men. It cannot be supposed that the people, when

adopting this general principle from the English bill of rights, and inserting it in our constitution, intended to bestow, by implication, on the General Court, one of the most odious and oppressive prerogatives of the ancient kings of England. It is manifestly contrary to the first principles of civil liberty and natural justice, and to the spirit of our constitution and laws, that any one citizen should enjoy privileges and advantages which are denied to others under like circumstances; or that any one should be subjected to losses, damages, suits, or actions, from which all others, under like circumstances, are exempt."

See to the same effect:
Hoke vs. Henderson, 4 Dev., 7.
Walley's heirs vs. Kennedy, 2 Yerg., 554.
Bank vs. Cooper's escurities, 2 Yerg., 600.
Jones vs. Perry, 10 Yerg., 69.

As the legislature has no inherent sovereignty, but derives all its power from the constitution, the power to pass the acts in question must be sought in the constitution, and it is not found there, unless it be in that clause which vests the legislative authority of this State in the General Assembly. What is legislative power? It is the power to make laws; and consequently, if the acts in question are laws, and are not within some of the limitations imposed by the constitution, they are valid. Law is a *rule* of civil conduct. *A rule* is general and universal. The acts under consideration are not a rule, but an edict or decree, limited to an individual case; hence, they are not laws, and are not within the legislative power. It is not intended to deny altogether the power of the legislature to pass private or special acts. There are many transactions of agency or negotiation which may be done by special act. But the legislature has no power to pass a special act, or which is the same thing, make an edict, by which an individual is to be deprived of his property, or the means provided by law for its security and protection; much less to deprive him of those rights in violation of the general laws of the State. This is undeniably true in principle, and the only obstacle in the way of its universal recognition is legislative usage. It is admitted that colonial and State legislatures have frequently passed acts in violation of this principle, and that such acts have, in a few instances, been sanctioned by judicial decisions; but since the adoption of our American constitutions, their validity has always been questionsd, and the weight of legislative, as well as judicial authority, is against their validity. When they have been sanctioned, it has been under the pressure of expediency, at the sacrifice of principle. This is not to be wondered at. Under the British constitution, the

British Parliament and American colonial legislatures had power to pass such acts. After the adoption of the American constitutions, and before their principles were well understood, it is not strange that legislators should continue to act from habit instead of under the new principles of our constitutions. The same thing occurs in every transaction and department of our life and business. Before the judiciary have been called on to act, property has been acquired under such acts, and no great wrong has been done to individuals. Under the pressure of these circumsttances, and the secret influence of habits and modes of thought, formed under the British constitution, judges have occasionally given a reluctant sanction to such acts, in violation of the principles of our constitutions. A careful examination of our legislative and judicial records, will show the truth of these remarks. In the case of Holden vs. Jarvis' administrator, 11 Mass., 400, the court held that a resolve of the Massachusetts legislature, authorizing an individual, whose claim was barred by the statute of limitations, to bring a suit for its recovery, was void. They say it is "clear that the court in which the action may be pending, must determine it according to law. If any other rule should be adopted in deciding the case, one party or the other would be deprived of that protection which is guaranteed by our constitution to every citizen, in the enjoyment of his life, liberty and property, according to standing laws." We cannot, therefore, presume that the legislature expected or intended that any court, in which this action might be pending, should, contrary to their duty and oaths of office, decide in any manner not warranted by standing laws. Neither can it be presumed that the legislature intended, on this occasion, to prescribe to the courts of justice the judgment which the laws of the land would require them to render on the facts disclosed in the case. This might as well be done with respect to any suit already pending, as to a suit about to be commenced, and in either case, would be an exercise of judicial power, by the legislative department of government, in violation of the express provisions of the constitution. The resolve was certainly not intended to operate in either of these modes. It resembles much more an act for repealing or suspending the standing laws, which provide for the limitation of such actions."

The court, after showing that the limitation law was not repealed or suspended, proceed: "the statute, then, was not repealed or suspended. The said term of four years was still going on, with respect to every executor and administrator

in the Commonwealth, who was not already discharged from his liabitity by force of that statute; and every executor and administrator, with respect to whom this period had alrea ly elapsed, was entitled to plead the limitation to any action which should be brought against him, as effectually after the passing of that resolve, as he could have done before it was passed.

It therefore appears that, by the laws in force at the time when this action was brought, no executor or administrator was held to answer to any suit commenced against him under the circumstances under which this action was commenced. The question returns, if there be any question, whether this court has any power, by virtue of the said resolve, to hold the defendant liable to this suit, notwithstanding the laws to the contrary, which then existed in full force. This question has been already answered, unless it be contended that the General court may repeal or suspend the law with respect to any one citizen, or any one particular suit, leaving it in full force as to all others."

After reviewing the Massachusetts declaration of rights, Magna-charta and the bill of rights passed in the reign of William and Mary, in relation to the power of dispensing with and suspending laws, the court remarks: "There is an implied reservation of authority in the parliament, to exercise the power here mentioned, because, according to the theory of the English constitution, "that absolute despotic power, which must, in all governments, reside somewhere," is intrusted to the Parliament."

"The principles of our government are widely different in this particular; here the sovereign and absolute power resides in the people, and the legislature can only exercise what is delegated to them according to the constitution. It is obvious that the exercise of the power in question would be equally oppressive to the subject, and subversive of his right to protection, according to standing laws, whether exercised by one man, or by a number of men. It cannot be supposed that the people, when adopting this general principle from the English bill of rights, and inserting it in our constitution, intended to bestow, by implication, on the general court, one of the most odious and oppressive prerogatives of the ancient kings of England. It is manifestly contrary to the first principles of civil liberty and natural justice, and to the spirit of our constitution and laws, that any one citizen should enjoy privileges and advantages which are denied to all others under like circumstances; or that any

one should be subjected to losses, damages, or suits, from which all others, under like circumstances, are exempted." The court then admits the power of the legislature to suspend a law, but denies its power to suspend its operation as to one person, whilst it is in full force as to all others.

In Picquet's appeal, 5 Pick. 65, the court refers to and approves the foregoing decision, and upon the same general reasoning, with additional illustrations, decides that a resolve of the legislature, directing a judge of probate to take an administration bond in a particular case, in a mode different from that prescribed by the general laws of the State, was void.

In the case of Lewis et. al. vs. Webb 3, Greenl., 326, the foregoing case is referred to and approved, and upon the same general reasoning, the court decided that an act of the legislature, granting an appeal in a certain case, was void, and the general doctrine is asserted, that the legislature has no authority, under the constitution, to pass any act or resolve, granting an appeal or a new trial in any case, between private citizens, or dispensing with any general law, in favor of a particular case. The court say: "A law is defined as a rule of civil conduct, hence, it must, in its nature, be general and prospective: a rule for all, and binding on all. It is the province of the legislature to make and establish laws; and it is the province and duty of judges to expound and apply them."

"In addition to what has been remarked under this head, it may be observed that there is no occasion for this species of particular legislative interposition. The cause of justice does not require it. If the general law, which gives authority to the judicial courts to grant reviews, in special cases, is not sufficiently comprehensive in its terms or provisions, let this discretionary jurisdiction be enlarged, so as to embrace all those cases where a new trial ought to be had; but let all the citizens be placed on the same level, and discuss the merits of their application before those tribunals, where facts can be investigated and principles uniformly applied," "*. *." "All public laws, from their very nature and effects, are to be considered as rules for future cases, prescribed for the benefit and regulation of the whole community. Laws of this description, are considered as the guardians of the life, safety, and rights, of each individual in society. In these, each man has an interest, while they remain in force; and on all occasions, he may rightfully claim their protection: and all have an equal right to make this claim.

and enjoy this protection, "*. *." "On principle, then, it can never be within the bounds of legitimate legislation, to enact a special law, or to pass a resolve, dispensing with the general law, in a particular case, and granting a privilege and indulgence to one man, by way of exemption from the operation and effect of such general law, leaving all other persons under its operation Such a law is neither just nor reasonable in is consequence. It is our boast, that we live under a government of laws, and not of men. But this can hardly be deemed a blessing, unless those laws have for their immovable basis, the great principle of constitutional equality."

To the same effect see Bradford vs. Brooks, 2 Aik., 284; Dupuy vs. Wickwire, 1 Chip., 237; Ward vs. Barnard, 1 Aik., 121; Keith vs. Ware, 2 Verm., 174; Lyman vs. Mower, 2 Verm., 517; Kendall vs. Dodge, 3 Verm., 360, 4 Yerg., 202, 5 Yerg., 320, 4 Greenl., 140, 2 Chip., 77, 1 N. Hamp., 199, 2 Murph., 390.

This subject was fully and ably considered in the case of Walley's heirs vs. Kennedy, 2 Yerg. 554, in which the court decided that an act of the legislature of Tennessee, authorizing the court to dismiss Indian reservation clases, where prosecuted for the use of another, was unconstitutional.—The court says, "what is the law of the land?" This court on two occasions, and upon the most mature consideration, has declared the clause, law of the land, means a general public law, equally binding upon every member of the community. The rights of every individual must stand or fall by the same rule or *law* that governs every other member of the body politic, or land, under similar circumstances; and every partial, or private law, which directly proposes to destroy or affect individual rights, or does the same thing by affording remedies leading to similar consequences, is unconstitutional and void. Were it otherwise, odious individuals, or corporate bodies, would be governed by one law, the mass of the community, and those who made the law, by another; whereas, a like general law, affecting the whole community equally, could not have been passed."

For the most lucid and conclusive exposition of this clause of the constitution, within the knowledge of the writer, he refers to the opinions of Judges, Green, Kennedy and Peck, in the case of the Bank vs Cooper's securities, 2 Yerg. 600. In this case it was decided that an act of the legislature creating a special court, for the determination of suits commenced by the Bank of the State of Tennessee, against her

officers and other defaulters to said Bank, was unconstitutional and void, for the reasons assigned in the foregoing opinion.

Judge Green, after stating that Lord Coke says the terms "law of the land," were used that the law might extend to all, says "majorities have nothing to fear; for the power is in their hands. They need no written constitution, defining and circumscribing the powers of the government. Constitutions are only intended to secure the rights of the minority. They are in danger. The power is against them; and the selfish passions often lead us to forget the right. Does it not seem conclusive then, that this provision was intended to restrain the legislature from enacting any law affecting, injuriously, the rights of any citizen, unless, at the same time, the rights of all others, in similar circumstances, were equally affected by it. If the law be general in its operation, affecting all alike, the minority are safe, because the majority who make the law, are operated on by it equally with the others. Here is the importance of the provision, and the great security it affords."

Judge Hickey, in his able opinion in the case of *exparte* Bedford, says: The legislature have not the power, as is supposed, to pass a law for the sale of a man's property, because he is indebted. They have the power to subject the lands of a debtor to sale for the satisfaction of the judgments and decrees of the judicial tribunal; but they have not the power to direct by statute, that the land or any estate of any man, shall be sold for the satisfaction of any debt, which they may be informed, or believe he owes. The creditor must appeal to the proper judicial tribunal, and there establish his claim; and after he has a judgment or decree, the law then prescribes what estate is liable for the satisfaction of such judgment or decree. Whether a man be indebted or not, depends upon his contracts, and upon his observance or violation of them, and is a subject of judicial, and not of legislative investigation. The parties, debtor and creditor, must be before the proper tribunal. There must be, in technical language, the *actor, reus, et judex.* The judgment of the tribunal must determine, conclusively, between the parties, the amount of the debt, before there can be a sale for its satisfaction."

Jurist & Law Mag. for Oct., 1853, p 301.

If this be not so, any person claiming to have a demand against another, may apply to the legislature and ask for relief, and the legislature, as was done in this case, may make

a decree in the form of a law, directing a sale of the property complained of, for the satisfaction of the claim. It is true, the persons authorized by the first act, to make the sale, were the representatives of Aaron T. Crane, and this circumstance may be supposed to distinguish their application to the legislature, and the power of the legislature in the premises, from similar applications by other persons. But the supplemental act conferred the power on, and the sale was made by persons who were strangers to the estate. It can make no difference that those persons happened to be administrators of the estate of Aaron T. Crane, as well as of Beck & O'Hara. They had no authority to sell under the act, as the administrators of Crane, but only as the administrators of Beck and O'Hara.

It was held by the Supreme court of New Hampshire, that the legislature of that State could not, by a special act or resolve, authorize the guardian of minors, to make a valid conveyance of the real estate of his wards.—4 N. Hamp. 572, 574.

In Lane et. al. vs. Dorman, et. als. 3 Scam. 238, it is held that an act of the Illinois legislature, authorizing an administrator to sell the land of his intestate, was unconstitutional and void. The court say the act is not the law of the land, and is in its nature judicial.

In the case of Jones vs. Perry, 10, Yerg. 59, the question is elaborately and ably considered, and all the cases reviewed, and it is held that an act of the Tennessee legislature authorizing an administrator to sell the land of his intestate, for the payments of his debts, was unconstitutional and void. This case is deserving of particular consideration, as well for its thoroughness, as for the force and clearness of its reasoning and illustrations.

Blackstone, in treating of the auxiliary rights established by the common law, which serve as out works or barriers, to protect and maintain, inviolate, the three great and primary rights of personal security, personal liberty, and private property, says, "it were useless to enumerate all the *affirmative* acts of parliament, wherein justice is directed to be done according to the law of the land; and what the law is, every subject knows, or may know, if he pleases; for it depends not upon the arbitrary will of any judge, but is permanent, fixed, and unchangeable, unless by authority of parliament. I shall, however, just mention a few *negative* statutes, whereby abuses, provisions, or delays of justice, especially by prerogative, are restrained. It is ordered by

Magna-charta, that no freeman shall be out-lawed, that is put out of the jurisdiction and benefit of the law, but according to the law of the land. By 2 Edw. 3, C. 8, and 11 Ric. 2, C 10, it is enacted, that no commands or letters shall be sent under the great seal, the signet, or privy seal, in disturbance of the law; or to disturb or delay common right; and though such commandments should come, the judges shall not cease to do right: which is also made a part of their oath by statute 11, Edw. 3, St. 4, and by 1 W. and M. St. C 2, it is declared, that the pretended power of suspending, or dispensing with law, or the execution of laws, by regal authority, without consent of parliament, is illegal.

Not only the substantial part, or judicial decisions of the law, but also the formal part, or method of proceeding, cannot be altered but by parliament; for if once those out-works were demolished, there would be an inlet to all manner of innovation in the body of the law itself."

The canstitution of Illinois has adopted all these out-works or barriers, to protect and maintain inviolate, the "three great and primary rights, of personal security, personal liberty, and private property," with this important modification, that here they are binding upon the legislature as well as the other departments of the government. The result of which is, that here, the courts are bound to try and decide cases according to the general and standing laws of the State, without regarding any pretended dispensations of these laws, by private legislative acts.

By the general standing laws of the State, the lands of deceased persons descend to their heirs, subject to a lien thereon, for the payment of the debts of the deceased. The title of the heirs to the realty of the deceased, can only be divested under such standing laws, in consequence of the existence of such lien. In the case of Stone et. al. vs. Wood, 16, Illinois 180, the Supreme court of Illinois say: "Under our law the legal title to the personal estate is in the administrator, while the title to the real estate descends to the heir." After again stating that the heir has no interest in the personalty, except as being entitled to the residue after payment of debts, the court in the same case, say: "But as regards the real estate, we think his (the heir's) position essentially different. There the title is vested in him, and is placed beyond the reach or control of the administrator, except the court is vested with authority upon a special proceeding against the heir, to direct him to sell the title of the heir. Nor is the administrator bound to protect the real estate. He is not even authorized by law to pay taxes upon it;

but it is in all respects vested in and under the control of the heir. To it the administrator is an utter stranger." "Before the administrator can acquire any right to interfere with or sell the real estate, he is required to institute a proceeding in the circuit court, citing the heir before it, and requiring him to show cause why the lands should not be sold to pay the debts of the estate. The law then, for the first time, calls him into court. He is cited into court for some purpose, certainly.—It may be said that that purpose is to enable him to show that the personal estate is not exhausted, and that hence there is no occasion to resort to the real estate. The statute does not thus limit his rights, but he is required "to show cause why it should not be sold for the purposes aforesaid." And what were those purposes? In the language of the statute, it is to pay the debts of the intestate. The administrator, too, is required in his petition, to give a schedule of those debts. Shall it be said that none of them shall be contested by the heir? There is as much authority for contesting a debt which has been passed upon and approved by the probate court, as one which has been admitted by the administrator to be just and as such, placed in his schedule."

In the case of Smith et. al. vs. McConnell, et. al. 17, Illinois 141, the Supreme court of Illinois, say: "It has been repeatedly held by this court, that the lands of one dying intestate descend to the heir; and although it is subject to the payment of debts, and may afterwards be divested by decree and sale of the administrator, the heir is nevertheless owner, and entitled to the rents and profits in the mean time. The administrator therefore, takes neither an estate title nor interest in the realty; not even so much as to make judgments for debts against the estate, absolutely binding by privity, as against the heir and the land, on an application to sell to pay the debts.—Stone et. al. vs Wood, admr. 16, Ills. 177."

By these general standing laws, the lands of a deceased person could only be sold, however, for the payment of debts of deceased by the administrator of deceased; before the administrator could make such sale, he must take an oath and give a bond and security, that he would faithfully and truly discharge his duty as such administrator; he must also, when he ascertains that the real estate of the deceased is insufficient to pay his debts, make a just and true account of the personal estate and debts, and also make out a petition to the circuit court of the county in which administration was granted, stating therein, what real estate the deceased, died seized of, and request the aid of the court in the premises, and give at least thirty days notice of the time and place of presenting said petition, by

serving a written notice of the same, together with a copy of said account and petition, on each of the heirs or devisees, of said deceased, or by publishing a notice in the nearest public newspaper for three weeks successively, commencing at least six weeks before the time of presenting such petition, requesting all persons interested in said real estate to show cause why it should not be sold. Upon the presentation of the petition, it was the duty of the Court, first, to appoint a guardian *ad litem* for minor heirs, and then to examine the petition and hear such proofs and suggestions as the administrator, or any other person interested, might offer or make, and to permit the heirs, or other persons interested, to show a sufficiency of personal assets to pay the debts, or that no debts in fact existed which were a lien on the realty of deceased.

If the Court was satisfied that the personal estate was insufficient to pay the debts, and that debts existed, it was the duty of the Court to make an order for the sale of the real estate, from which order any person interested might appeal to the Supreme Court, provided the appeal be entered at the term at which the order was made.

By the general laws, all these things had to precede the sale, and then the sale had to be at public vendue, between the hours of ten in the morning and the setting of the sun of the same day, and after the time and place of holding such sale had been advertised publicly for the space of si weeks successively, &c.

These were the outworks and barriers established by the standing general laws of the State, for the protection and maintainance of the rights of the heirs of deceased persons.

The acts in question did not suspend or repeal them, but left them in full force for the protection and maintainance of the rights of all persons, except the heirs of Aaron T. Crane. They were outlawed, that is, put out of the benefit and protection of those laws. The heirs of Crane could not be deprived of their land, but by the judgment of their peers or the law of the land. If, as decided by the Court below, they have been deprived of their land, they have been so deprived against the general laws of the State. They have been sold and conveyed away from them by strangers to the estate, who took no oath, and gave no bond or security for the faithful discharge of their duty; who made no account of the personal estate and debts of the deceased, without any notice of their intention to apply to the Court for an order to make the sale, and the sale was made, not at public auction, but at private sale, without any notice whatever.

The heirs of Crane have not only been deprived of their land in violation of the general public laws of the State, but without the judgment of their peers or the law of the land, unless indeed these private acts are the law of the land, which will hardly be pretended. Here, then, has been a double violation of the constitution. The heirs of Aaron T. Crane are first outlawed, or put out of the protection of the laws enacted for the protection of the rights of all persons situated as they were, and then deprived of their property against the law of the land, both of which are expressly forbidden by the constitution.

It is scarcely possible to conceive of a class of private acts, more odious and objectionable in principle than the acts under consideration. If the Court should be induced to sustain them, on the ground that sales have been made, and titles acquired under them, and that no great wrong is shown to have been done, it is to be remembered that usurpations of power are always made in the first instance under plausible pretexts, and under circumstances not calculated to excite public alarm, and that, by sustaining such acts, they are breaking down the great barriers established by the constitution for the protection of the rights of individuals against governmental wrong; that constitutions are not made for the present day alone, but for all time to come, and that if, as is fondly hoped, they are to be perpetual, and the great outworks which they have erected against usurpation of power preserved in their integrity, Courts must bring legislative acts to the standard of the constitution, and check usurpation at the threshold. This is a sacred duty which they owe to present and future generations, and from which they cannot shrink without a dereliction of their high trust.

But if these acts are to be sustained as constitutional enactments, then they delegate a special authority in derogation of the common law and of common right; and upon the clearest principles of law, they must be strictly construed and strictly complied with, and persons claiming title under them must, in order to sustain their title, prove that they have been strictly pursued.

In Williams et al vs. Peyton's lessee 4 Pet. Cond. Rep. 395, Chief Justice Marshall says: "It is a general principle that the party who sets up a title, must furnish the evidence necessary to support it. If the validity of a deed depends on an act *in pais*, the party claiming under that deed is as much bound to prove the performance of that act, as he would be bound to prove any matter of record on which its validity might depend."

The same distinguished Judge, in Thatcher vs. Powell, 5 Pet. Cond. Rep. 32, says: "That no individual or public officer can sell or convey a good title to the land of another, unless authorized so to do by express law, is one of those self-evident propositions to which the mind assents without hesitation; and that the person invested with such a power must pursue with precision the course prescribed by law, or his act is invalid, is a principle that has been repeatedly recognized in this court."

The supreme court of Virginia say: "All *exparte* proceedings being liable to great abuse, must be carefully watched, and strictly confined to the ground covered by the law."

In Smith et al vs. Hileman, 1 Scam. 325, the court say, "A special power, granted by statute, affecting rights of individuals, and which divests the title to real estate, ought to be strictly pursued, and should appear to be so on the *face* of the proceedings."

In Day vs. Eaton & Co., 1 Scam 476, the court say, "As the proceedings under the statute are summary, it should be strictly complied with."

In Rex vs. Coke, 1 Cowp. 26, Lord Mansfield says, "This is a special authority, delegated by act of Parliament to particular persons, to take away a man's property and estate against his will; therefore it must be strictly pursued, and must appear to be so upon the face of the order."

The power conferred by these acts was a power to sell for the payment of debts. The existence of debts was therefore a condition upon which the power depended, and which the defendant was bound to prove.

Sug. on powers 267. And this could only be proved by the record of the probate court.

In Davenport vs. Young, et ux. 16 Illinois Rep. 551, the court say, speaking of an act of the Illinois legislature which authorized the administrator of D. L. W. Jones, deceased, to sell his real estate, "The facts contemplated by the statute, upon which the power to sell depended, were not shown to exist;** the act authorized the administrator to sell, at public or private sale, such of the real estate of the said decedent as is situated within this State, and the Territory of Michigan, the proceeds whereof, shall be applied to the liquidation of the debts of the said decedent, and the residue to be invested, &c., for the widow and heir, with the advice of the Judge of Probate. The supposed existence of debts to be paid, and an insufficiency of personal assets to do so, is the apparent reason for granting this power and the object of it, to raise means to pay them; the Legislature had no consti-

tutional power to find and determine the fact that there were debts owing, (Lane et al vs. Dorman 3 Scam. R. 238; Edwards vs. Pope et al 3 Scam. R 470, 4 Scam. R. 134) and could, therefore, only grant power to be exercised, if and when, the fact should be established in due course of administration; it could not depend upon the private knowledge of Whitlock or Paine, as administrator nor upon their will and pleasure; none have been shown by the probate records and files, and none are, therefore, supposed to exist. The court very properly excluded parol evidence, offered to supply this fact; the court, on the trial in this suit, had no power to settle, ascertain, adjust, allow and sanction debts against the estate. Many difficult questions might arise, the Statute of Limitations might be a defense to their allowance, and it would be impossible in this collateral manner, to draw in question the settlement of that estate, even had the court jurisdiction. Whether before or after the sale of the land, still it was essential to the exercise of the power of sale, to establish and have the debts allowed regularly before the proper tribunal, having jurisdiction."

But it is asserted that the order of sale made by the circuit court proves the existence of debts. There would be some plausibility in this pretence if the order had been made by that court in the exercise of its general jurisdi tion after it had acquired jurisdiction of the persons of the heirs of Crane, by notice served on them, or by publication. But, as the circuit court made that order in the exercise of a special jurisdiction conferred by a private act without any notice whatever, the order can have no such effect. There can be no presumptions in its favor, and no presumptions of facts not directly established by it, can be drawn from it, particularly as to a fact, which, by law, must be directly established by another court, and could only be proved in the circuit court by the record of that other court. This order of the circuit court, though made by a court of general jurisdiction, yet as it is made in the exercise of a special jurisdiction conferred by a private act, is subject to the rules that apply to and govern courts of special and limited jurisdiction.

In Thatcher vs. Powell, 5 Curtis 35, the court say of a judgment or order of a court of general jurisdiction: "The judgment against the land was given at January term, 1802, on motion, without its appearing, by recital or otherwise, that the requisites of the law in this respect, had been complied with, and that the tax still remained unpaid.

We think this ought to have appeared in the record.

The argument is, that the judgment for these errors in the

proceedings of the county court may be voidable, but is not void; that until it be reversed, it is capable of supporting those subsequent proceedings which were founded on it.

We think otherwise. In summary proceeding, where a court exercises an extraordinary power, under a special statute prescribing its course, we think that course ought to be exactly observed."

In Alabama, where courts of general jurisdiction were authorized by statute to enter judgment on motion, in Martin vs. Avery, 8 Ala. R. (N. S.) 430, the court say: "From the earliest period of this court, it has been held, that to sustain these summary judgments, it must appear affirmatively upon the record that every fact was proved to exist which is necessary to confer the jurisdiction upon the court." See also, Casky vs. the State, 6 Ala. R. (N. S.) 194, Allums and others vs. Hawley, 8 Ala. R. (N. S.) 585—8 Porter, 372.

In Mayor of Alexandria vs. Chapman, 4 Hen. and Munf. 276, Judge Roane says: "I shall not add to or alter the law in favor of this summary proceeding." * * "I can presume nothing to support a summary judgment. These ideas have resulted, as well from my own deliberate judgment in the case, as from the spirit of decisions in this court in relation to summary proceedings."

In the case of the United States vs. Clark, 8 Pet. R. 444, the court, speaking of the District court of the Eastern District of Florida, say: "The proposition, that in courts of a special limited jurisdiction, which that of East Florida unquestionably is in this case, the pleadings must contain averments which bring the case within the jurisdiction of the court, or the whole proceeding will be erroneous, is admitted."

In Boswell's lessee vs. Otis et al, 9 Howard 348, the court say: "The principle is admitted, that, where jurisdiction is acquired against the person by the service of process, or by a voluntary appearance, a court of general jurisdiction will settle the matter in controversy between the parties. But this principle does not apply to a special jurisdiction authorized by statute, though exercised by a court of general jurisdiction." See to the same effect, 4 McLean 262, Striker vs. Kelly, 7 Hill (N. Y.) R 9.

Williamson et ux vs. Perry, 8 Howard 495, 537, 538, 543.

In Herdman vs. Short, 18 Illinois R. 60, the court, speaking of an order of the circuit court, directing the sale of real estate by an administrator, to pay debts, say: "This statute was not complied with in any particular; not even as to Ogden, upon whom the summons was served."

Where no publication was made, as in this case, the statute

requires a copy of the petition and account, which is filed in the circuit court, to be served on each heir or guardian. Without this, there was a want of jurisdiction, so far as the persons were concerned; and, although this proceeding partakes much of the character of proceedings *in rem*, if it is not strictly so, yet the court has no authority to act, except under and in conformity to the statute." See also Manikin vs. Chandler & Co., 2 Brockenb. 126, and note at the end of the case.

Notice to the heirs, then, being a jurisdictional fact, upon which the power of the court, to act, depended, and the order being made in the exercise of a special jurisdiction, given by a private act, and limited to a single case, it follows, that as no notice appears to have been given, by recital or otherwise, that the proceeding was *coram non judice*, and void.

But it is contended that, as the act under which the order was made did not require notice, none was necessary, and of this opinion was the Court below.

The order was to be made by the proper Court, and we insist that it should, upon every principle of fair construction, have been made upon a proper application, and according to law. A judgment binds parties and privies because they have had a hearing in court. It is on this ground that it binds none but parties and privies.

In Chase vs. Hathaway, 14 Mass., 224, the Court say:

"There being no provision in the statute for notice to the party who is alleged to be incompetent, by reason of insanity, to manage his estate, it seems that the judge of probate did not think such notice essential to his proceedings. But we are of opinion that, notwithstanding the silence of the statute, no decree of a Probate Court, so materially affecting the rights of property, and the person, can be valid, unless the party to be affected has had an opportunity to be heard in defence of his rights.

It is a fundamental principle of justice, essential to every free government, that every citizen shall be maintained in the enjoyment of his liberty and property, unless he has forfeited them by the standing laws of the community, and has had opportunity to answer such charges as, according to those laws, will justify a forfeiture or suspension of them. And whenever the legislature has provided that, on account of crime or misfortune, the public safety or convenience demands a suspension of these essential rights of the individual, and has provided a judicial process, by which the fact shall be ascertained, it is to be understood as required, that the tribunal to which is committed the duty of enquiring and deter-

mining, shall give opportunity to the subject to be heard in support of his innocence or his capacity.

See to the same effect, Hathaway vs. Clark, 5 Peck, 491.

In the case of Eddy vs. The People, 15 Illinois, the Court say: "We shall confine our discussion in this case to the question of notice. The statute provides that, whenver a lunatic has any estate, the judge of the Circuit Court of the county in which such lunatic lives, shall, on the application of any creditor or relative of the lunatic, order a jury to be summoned, to inquire whether such person be lunatic, and if the jury shall so find, the judge shall appoint a conservator, &c. The statute is silent upon the subject of notice, and the question is, whether it is regular to proceed without notice to the supposed lunatic. We are clearly of opinion that, upon the general principles of law, the supposed lunatic is entitled to reasonable notice. If he be in fact a lunatic, the notice would be undoubtedly useless; but that is the very question to be tried, and until a regular trial is had, or inquest made, the presumption is in favor of his sanity. * * * The idea is too monstrous to be tolerated for a moment, that the legislature ever intended to establish a rule by which secret proceedings might be instituted against any member of the community, by any party who might be interested, to shut him up in a mad-house, or by which he might be divested of his property and his liberty, without an opportunity of a struggle on his part. * * Such justice as this would be worthy of that dread tribunal, the holy vehme, whose first notice to its victim was the execution of its sentence; but it cannot be tolerated where just and equal laws prevail, and can be enforced. * * If notice was given, the record should show it affirmatively. How is it possible, upon this writ of error, for the plaintiff to show the negative, and prove that he had no notice? This case must be tried by the record, and neither party can introduce other evidence to contradict, explain, or enlarge it. The record should have shown the notice."

But it is contended that both the notice and the existence of debts ought to be presumed from lapse of time. Both of these things should appear upon the record, or among the files of the Circuit and Probate Courts, and cannot therefore be presumed from lapse of time; but must be proven by the records and files of those courts. In Brunswick vs. McKean, 4 Green R., 511, the Court say, "legal presumptions generally apply to facts of a transitory character, the proper evidence of which is not usually preserved with care; but not to records or public documents in the custody of officers charged with their preservation and safe keeping, unless proved to have been lost

or destroyed." * * "The votes in question, passed at the meetings of the inhabitants of the town of Brunswick, could have no efficacy, unless in pursuance of articles regularly inserted in the warrants, by which these meetings were called. According to the usual course of proceedings, these warrants were either recorded, or preserved in the office of the town clerk. For anything that appears in the case, they might have been there found, and certified copies obtained. No sufficient reason having been assigned why they were not produced, copies of the votes were, in our opinion, properly rejected."

In Hathaway vs. Clark, 5 Pick, 490, to prove that the plaintiff was under guardianship, the records of the Probate Court were produced, from which it appears, that in 1793, a representation was made to the Judge of Probate, that the plaintiff was *non compos;* that the judge directed the selectmen of the town to make inquisition thereinto; that the selectmen adjudged him to be *non compos*, and made return of their proceedings to the Judge of Probate, and that a letter of guardianship thereupon issued. It also appears, that several new guardians were subsequently appointed in the place of others who had died or resigned, and that the several guardians had retured inventories of their ward's estate, and made settlements in the probate office. The court say, "as the records apparently are entire, and no loss of any of the papers in the probate office is suggested, we cannot, even after the lapse of more than thirty years, presume that any decree passed, or that any notice was given, which does not appear.

Notice to the person to be affected by the inquisition of the selectmen, and especially by the adjudication of the Probate Court, is essential to the validity of the proceedings of that court. Any judgment or decree that a person is *non compos*, or appointing a guardian for that cause, without notice, is absolutely void."

To support the order of the Circuit Court, it should appear:

1st. That the estate of Aaron T. Crane was indebted more than his personal estate was sufficient to pay.

2d. That a just and true account of his personal estate and debts was made.

3d. That a petition to the Circuit Court, &c., was made out.

4th. That notice of the intention to present said account and petition to the Circuit Court, &c., was given.

5th. That said account and petition was presented to the court.

The order recites simply that the petition was read and filed, and that thereupon the order was made. It does not recite that the account was presented, or that any notice had been given, or that it was proved or appeared to the court that said estate

was indebted, and no attempt was made on the trial of this case to make such proof. For these reasons, the order and the administrator's deed ought to have been excluded from the jury. The deed ought to have been excluded for the additional reason that it was made upon a private sale, without any notice whatever. The special act of Feb. 8, 1821, authorized the sale to be made at private instead of public sale, "anything contained in the thirteenth section of the act, entitled an act to regulate administrations and the descent of intestates' estates, and for other purposes, approved March 23d, 1819, to the contrary notwithstanding."

But the 3d section of an act to authorize administrators and executors to sell real estate in certain cases, approved Jan. 28, 1823, provides "that no lands and tenements shall be sold by virtue of any such order of the Circuit Court, unless such sale be at public vendue, and between the hours of ten in the morning and the setting of the sun of the same day; nor unless the time and place of holding such sale shall have been previously advertised publicly for the space of six weeks successively," &c., "and if any executor or administrator, ordered as aforesaid to make sale of the real estate of any testator or intestate, shall sell the same contrary to the provisions of this act, the said executor or administrator shall forfeit and pay the sum of five hundred dollars."

This act was passed after both of said private acts, but before the said order and sale were made, and repealed the clause in said act which directed the lands to be sold at private instead of public sale. The Court also erred in instructing the jury that the defendant had shown paramount title in himself, and that it was consequently their duty to find a verdict in his favor.

ARCHIBALD WILLIAMS,

Attorney for Plaintiff in Error.

NOTE.

The foregoing argument was prepared and printed by my late partner, Archibald Williams, under the following circumstances, to-wit:

On the 22d of July, 1859, whilst said Archibald Williams was still of counsel in the case, a trial was had and judgment rendered in favor of the Defendant in Error, as will appear by reference to page 9, of the original record and page 5, of the printed record herein. This was all that was done, except to preserve a bill of exceptions, at that term of the court.

Thereupon Mr. Williams, intending to bring the case into this court, prepared and printed the foregoing argument in advance of filing the record.

Afterwards, the counsel for Defendant in Error, wishing to adduce additional evidence, entered into an agreement to set aside the judgment of 22d July, 1859, (see original record page 10, and printed record page 5,) which was accordingly done.

The case was again tried July 10, 1862, and a judgment again rendered in favor of the Defendant in Error, (see original record page 13, printed record page 6.) The only additional evidence adduced upon the last trial, was the depositions of Wm. Ross, Strother Griggsby and George W. Jones. (See pages 34, 35, 36, 37, 38 and 39, original record, and pages 18, 19 and 20, printed record.) I do not consider said additional evidence of any importance to the case, and therefore adopt the foregoing argument as the argument in the present attitude of the case, and only make this note out of respect to the court and the memory of Mr. Williams, who was at the time of the last trial of the case below, Judge of the District Court of the U. S. for the district of Kansas, and I am unwilling that he should be made to *appear* as counsel in a case which was tried whilst he was on the bench.

JACKSON GRIMSHAW,
Attorney for Plaintiff in Error.

In the Supreme Court.

JOSEPH FLORENTINE,
Plaintiff in Error.

vs.

WM. C. H. BARTON.
Defendant in Error.

Error to the Northern District of Illinois.

DEFENDANT'S BRIEF.

This was an action of ejectment from the Northern District of Illinois, brought by the plaintiff to recover possession of a tract of land in Peoria county, Illinois, and was tried before Judge Drummond, under whose instructions the jury found a verdict for the defendant.

The title was originally vested in Aaron T. Crane, who died in the year 1819, intestate. Both parties claim through this common source of title. The title of the plaintiff is deduced by virtue of a deed executed under a power of attorney from the heirs of said Crane, made in the year 1857, and shortly prior to the commencement of this suit. This deed being apparently regular and the heirship proven, a *prima facie* case is made for the plaintiff.

The contest is upon the defendant's title, which is derived as follows: Abraham Beck and William O'Hara were the administrators of the estate of Aaron T. Crane, and on the 8th of February, 1821, the Legislature of Illinois passed an act entitled, "An Act for the relief of the representatives of Aaron T. Crane, deceased," the 3d section of which, being all that is material in this case, is as follows:

"*Be it further enacted*, That the said administrators (Abraham Beck and William M. O'Hara) be and they are hereby authorized and empowered to

sell such part of the real estate of the said Aaron T. Crane, deceased, as they may at any time be ordered to sell by the proper Court for the payment of the debts of the said intestate, and that sale may be made at private sale, instead of public sale, anything contained in the 12th section of the Act entitled, 'an Act to regulate Administrations and the descent of intestates' estates and for other purposes approved March 23d, 1819,' to the contrary notwithstanding, and that the said administrators upon such sale may execute conveyances for the land sale, and the conveyance for the same shall set forth such order at large and shall be valid and effectual against the heirs and devisees of said intestate and all claiming by, from or under him; *Provided*, That before any conveyances are made such sales shall be reported to one of the Justices of the Supreme Court and be approved by him."

Shortly after the passage of this act both of the said administrators died, and on the 5th of November, 1821, the Probate Court of Pike county, Illinois, issued letters of administration upon the estate of said Crane to Eli B. Clemsen and Daniel D. Smith, and at the same time said Probate Court issued letters of administration to the same parties upon the estates of Beck and O'Hara, so that Clemsen and Smith became the administrators of the several estates of Crane, Beck, and O'Hara.

On the 11th of January, 1823, the Legislature of Illinois passed an act, supplementary to the aforesaid act, which provided, "That all the powers given, by the act to which this is supplemental, to Abraham Beck and William O'Hara as trustees and administrators of Aaron T. Crane, deceased, be, and the same is hereby, extended to the legal administrators of the said Abraham Beck and William O'Hara."

At the October term of the Circuit Court of Pike county, Illinois, 1823, a decree was rendered ordering the sale of the land in controversy by the said administrators of said Crane. On the 17th of October, 1823, the said administrators sold this land to Amos Ferris, which sale was reported to John Reynolds, one of the Justices of the Supreme Court of Illinois, and who was then holding the Circuit Court of Pike county, who approved the sale by endorsement on the deed.

The defendant claims title of deeds, duly authenticated, from Amos Ferris, and proved that he and those under whom he claimed had occupied the premises for more than twenty years prior to the commencement of this suit.

The first objection to this title is that the acts of the Legislature of Illinois, above recited, are in violation of the Constitution of that State.

I presume it will hardly be contended that the acts are in violation of the Constitution of the United States, as this Court have so often decided that unless the acts of a State Legislature come clearly within the exceptions contained in the Constitution of the United States, that is unless the act is clearly either "an ex post facto law" or "impairs the obligation of contracts," this court will not disturb it. That these acts do not fall within either of these exceptions is well settled.

The case of Wilkinson *vs.* Leland (2 Peters, 628) was an action of ejectment for land lying in Rhode Island, originally belonging to one Jenckes. The land was sold by his administrator, who had qualified in New Hampshire, and under an order of the Probate Court of that State sold the land, and afterwards the Legislature of Rhode Island passed an act confirming the sale. This court decided that such act did not conflict with the Constitution of the United States, and sustained the title so derived.

The case of Calder *vs.* Buell (3 Dallass, 386) was a case where the Legislature of Connecticut set aside a decree of the Court of Probate of Hartford county, and granted a new hearing, with right of appeal, in a case where a decree had been rendered, and by the then existing laws of that State had become final.

The court say that the act is not repugnant to the Constitution of the United States; and further, the justice delivering the opinion, says: "I am fully satisfied that this court has no jurisdiction to determine that any law of any State Legislature, contrary to the constitution of such State, void. I would think the Court of Connecticut the proper tribunal to determine that any law of any State legislature, contrary to the Constitution of such State, void."

"It appears to me a self evident proposition that the several State legislatures retain all the power of legislation delegated to them by the State constitutions, which are not expressly taken away by the Constitution of the United States."

In the case of Baltimore and Susquehanna Railroad Co. *vs.* Nesbitt (10 Howard, 396, 660) the court say: "The only limit upon this power in the State Government to enact retrospective or retroactive laws is by the Federal Constitution, and therefore the only source of cognizance or control is the power to enact ex post facto laws or such as impair the obligation of contracts.

Also to the same effect:

Mills *vs.* St. Clair County, 8 Howard 585.

Charles River Bridge *vs.* Warren Bridge, 11 Peters 535.

Fletcher *vs.* Peck, 6 Cranch 87; 2 Con'd 309.

Carpenter *vs.* The Commonwealth of Pennsylvania, 17 Howward 456-462.

Satherlee *vs.* Mathewson, 2 Peters 380.

Watson *vs.* Mercier, 8 Peters 88.

Jackson *vs.* Lamphire, 3 Peters 280.

Will this court consider the question whether or not a State law violates the constitution of that State? As the Court, in the case of Calder *vs.* Buell, says the Courts of the State are the proper tribunals to determine questions of this character. It is the peculiar province of the State Courts to determine all questions arising out of conflicts of State laws and the constitution of that State, and especially in a case like this, where the State Courts have adjudicated upon the question, and had rendered a decree in accordance with the provisions of said acts, and that, too, more than forty years ago, and which decree stands to this day unaltered, unreversed, or set aside. It would be in effect giving this court power to review a decree of a State Court in a collateral manner, where none of the parties to the decree are before the Court, after the lapse of forty years, and where the rights of parties have been so long acquiesced in, and when it cannot be pretended that this Court would have any authority to review such decree upon a direct proceeding even if application had been made within the proper time. To sanction this would be to overturn all the rules of practice, and the principles upon which the statutes of limitation are founded.

But what provisions of the constitution of Illinois do these

acts violate? The only exception to the power of the legislature is contained in sec. 16, chapter 8 of the constitution, which provides that "no ex post facto law, nor any law impairing the validity of contracts shall ever be made." In sec. 12, of the same chapter, it is provided that "every person within this State ought to find a certain remedy in the laws for all injuries or wrongs which he may receive in his person, property, or character"—thus giving the legislature power to provide remedies but not to take away remedies.

By bearing in mind the organization of the government in the investigation of the points which are relied on, and in the examination of the different decisions, it will be seen, I think, that there is no material conflict in the decisions of the courts. The government is composed of three branches—the Executive, the Legislative, and the Judiciary; to each of these branches are delegated certain duties and powers. The legislative branch has the power of making the laws, of providing the means by which the rights of parties may be determined, and when so determined by its co-ordinate branch the judiciary of providing the remedies for enforcing the decrees or judgments of the courts. And it is upon this principle that all the decisions in respect to private acts are provided, unless the act comes within some one of the exceptions contained in the constitution; that is, the courts inquire whether the act is of a legislative or judicial nature—does it attempt to legislate upon the rights of parties or does it merely provide a remedy either in addition to, or different from the remedy already provided in the general law.

The case of Gains et al, *vs.* Buford, 1 Dana 499, cited, was a case where, by an act of the legislature of Kentucky, certain lands were forfeited to the commonwealth and given to the occupant unless the owner should in a given time make certain improvements. This was directly affecting the rights of the owner of this land and therefore unconstitutional.

The case of Holden *vs.* Jarvis, 11 Mass 400 cited, was a case under an act authorizing an individual whose claim was bound by the statute of limitations to bring suit for its recovery. The court decides the act unconstitutional for the rea-

son that the effect of it is to prescribe to the courts the judgment to be rendered and which might as well be done in respect to a suit already pending as to one about to be commenced, and which in either case would be an exercise of judicial power by the legislative department in violation of the express provisions of the constitution.

In the case cited, Picquet's case 5 Pick. 65, the facts were that the legislature authorized the Judge to grant letters of administration giving bonds with his brother as security. The judge refused to grant the letters as specified in the act. Upon appeal, the Court decided that the act was not obligatory upon the judge, he being the proper person to determine as to the sufficiency of the security.

The case ex parte Bedford is decided upon the principle that the act is of a judicial nature—the Court in that case deciding that the legislature has the right to subject the land of a debtor to sale for the satisfaction of the judgments and decrees of a judicial tribunal, but have not the power to direct by statute that the land or estate of any man be sold for the satisfaction of a debt which they may be informed or believes he owes.

We now come to the Tennessee cases.

In the case of Walley's heirs *vs.* Kennedy 2 Yerger 554, the act referred to amounted to a prohibition to suits in favor of particular persons, thus directly affecting their rights as citizens. In the case of the Bank *vs.* Cooper Licentus 2 Yerger 600, the Court decided that the act establishing a certain court was void for the reason that it was not the "law of the land"—having reference to the peculiar phraseology of the constitution of Tennessee.

Particular attention is called in the plaintiff's brief to the case of Jones *vs.* Perry, 10 Yerger 59, in which the court held an act of the legislature authorizing an order to sell the lands of his intestate for the payment of his debts void. In this, however, the same great general principle is observed. The Court say: "The whole of the judicial power of the State having been vested in the courts the assumption of said power by the legislature would encroach upon the jurisdiction of

another co-ordinate department of the government—would transcend the powers entrusted to it and would consequently be unconstitutional and the act void. The question then recurs is the act under consideration of a judicial character. It was enacted upon the avowed ground that the estate John Jones, deceased, was indebted. The court in this case on page 78 says further: "Several cases have been referred to where special laws have been declared constitutional by this court. Williams *vs.* Norris, 12 Wheaton; Hope *vs.* Johnson, 2 Yerger; and Vanzandt *vs.* Waddell, 2 Yerger. These cases were determined upon the principle that they deprive no one of a right but were enacted to advance the remedy of a party whose right already existed.

In this connection I wish to refer the Court to the cases above referred to in the Tennessee Courts, in which the doctrine is laid down broadly that the Legislature have perfect and absolute control in regard to remedies to enforce existing rights.

Townsend *vs.* Townsend, 1 Peck. 1.
Hope *vs.* Johnson, 2 Yerger 123.
Varzandt *vs.* Waddell, Zerger 260.
Fisks Negroes *vs.* Dobb, 6 Zerger 119.
Williams *vs.* Norris, 12 Wheaton 117.
Storrs *vs.* Peace, 8 Conn. 541

The act in question in the case of Hope *vs.* Johnson was passed after the proper county Court had refused to take jurisdiction of a certain case and authorized any circuit court to receive and consider the case and grant it or not as it might deem proper, the court says: "The legislature only provided a remedy for an existing right. It is not unconstitutional to provide a new or additional remedy for a just right already in being which would be lost or destroyed if no remedy were provided.

I wish to refer the court to two cases in Kentucky reports, to wit: Kirby *vs.* Chitwood heirs, 4 Monroe 91; and the case of Shehan heirs *vs.* Barrett heirs, 6 Monroe 592, which are cases in reference to special acts authorizing administrators in special cases to sell the real estate of descendants for

the payment of debts. The Court sustained both acts upon the ground that they did not affect the rights of any party but only changed the manner of sale.

In the case cited by Judge Williams in 4 N. H. 572, the court says as a reason against passing the act, "The objection to the exercise of such a power by the legislature is that it is in nature both legislative and judicial.

In Illinois whenever the question of the acts of the legislature have arisen, they have been decided upon the same general principle. The inquiry is made: "Is the act of a judicial character or not? Does it affect the right of a party or simply the remedy?

Such were the decisions in the case of Law *vs.* Dormon, 3 Scam. 238, and Stone *vs.* Wood, 16 Ills. 180; Davenport *vs.* Young, 16 Ills. 551, in which the Court say there must be some judicial act to determine the facts necessary to authorize a sale of lands—that the existence of debts for the payment of which the authority to sell is given, must first be established in court "that the legislature had no constitutional power to find and determine the fact that there were debts owing and could therefore only grant power to be exercised if and when their part should be established in due course of administration."

In the case of Mason *vs.* Wait, 4 Scam. 128, which was based upon a private act of 1834 empowering Sarah Mason to sell and convey the lands of her ward at public or private sale *under the direction and sanction of a Judge of Probate*, the court held the act not repugnant to the constitution of that State.

In view of the distinction so established, let us examine this act. The General Assembly in enacting these acts usurped none of the power of the judiciary; indeed it was extremely cautious not to assume or determine any fact properly belonging to the judiciary department. Section 3 says: "That the said administrators be, or they are hereby authorized and empowered to sell such part of the real estate of the said Aaron T. Crane as they may at any time *be ordered ti sell by the proper Court* for the payment of the debts of the said

intestate." Thus the Legislature left all questions of a judicial nature to the Courts to decide. Such as the existence of debts, the necessity of subjecting to sale, for the payment thereof, any real estate and what real estate. The only change in this law from the general laws on the subject is as to the manner of sale providing that such sales might, under certain circumstances, be made at private sale. Still even this was under the control of the Court. The administrators were bound before sale to obtain an order of the proper Court, and such order might direct the manner of sale. This act, however, further provided that in case any sale should be made at private sale under the order of Court, before any conveyance should be made, such sale should be reported to one of the Justices of the Supreme Court and be approved by him. Thus did the Legislature grant but little descretion or power to the administrators, and for the purpose of providing against fraudulent sales, and further to secure sales for adequate prices, threw around the transaction these safeguards Whether this power to sell at private sale was a wise provision or not, we cannot now determine, nor is it necessary to call that in question, but the Legislature undoubtedly took into consideration the fact that wild lands were then of but little value—that the lands of Crane were scattered and that the expenses of the usual course of administration would, under the circumstances, exhaust all the proceeds.

The Legislature has power to direct the manner of sales by administrators, but the Courts must determine the necessity. In this case the Legislature directed the manner of sale and the Courts adjudicated upon the facts necessary to authorize the sale and made the order of sale

The Legislature may direct notice to be given to the heirs, or it may authorize sale without notice.

Rice *vs.* Parkman, 16 Mass. 326.

Grignons Lessee *vs.* Astor, et al. 2 Howard 319.

The objection is also made to this act because it is a private act. Scarcely a Legislature convenes that does not pass more or less special acts, conferring jurisdiction on courts in particular cases and over particular subjects and persons, as for instance the charters to Rail Roads, Plank Roads, Bridge Companies, &c., in which charters, is usually provided in each charter the manner of assessing damages, and before what Courts, and the practice regulating the same, and also in cases more similar in principle to this act. As the case of Sarah Mason referred to in 4 Scammon 128, also the act referred to in 16 Mass. 326.

I therefore think that even the State Courts of Illinois would not declare this law unconstitutional, if the case was before them.

The next objection is to the decree of the Pike Circuit Court for the sale of this land, for the reason that the decree does not show the manner of the acquiring jurisdiction by the Court.

The Circuit Court is a Court of general jurisdiction and its judgments and decrees are binding until reversed.

Kinney *vs.* Green, 13 Ills. 452.

And when a judgment is attacked, collaterally, jurisdiction will be presumed in absence of all facts which show jurisdiction.—Ibid.

In ex parte Watkins, 3 Peters 206, this Court say it is universally understood that the judgments of the Courts of the United States, although their jurisdiction be not shown in the pleadings, are yet binding on all the world and that this apparent want of jurisdiction can avail the party only on a writ of error or appeal.

In M'Cormick *vs.* Sullivan, 10 Wheaton, in answer to the argument that proceedings were void when the jurisdiction was not shown, this Court say when the jurisdiction is not alleged in its proceedings, it is erroneous and may be reversed upon writ of error or appeal, but is not an absolute nultity.

"If the law confers the power to render a judgment or decree

then the Court has jurisdiction as to what shall be adjudged or decreed between the parties and with which is the right of the case is judicial actions by hearing and determining."

12 Peters 718.

3 Peters 205.

Grignons Lessee *vs.* Astor, et al, 2 Howard 338.

"Nor is it necessary that a full or perfect account should appear in the records of the contents of the papers on file, or the judgments of the Court on matters preliminary to a final order. It is enough that there be something of record which shows the subject matter before the Court and their action upon it that their judicial power arose and was exercised by a definitive, order, sentence or decree."

Grignons *vs.* Astor, 2 Howard 340.

2 Peters 165.

"The granting the license to sell is an adjudication upon all the facts necessary to give jurisdiction, and whether they existed or not is wholly immaterial if no appeal is taken. The record is absolute verity to contradict which there can be no averment or evidence, the Court having power to make the decree, it can be impeached only by fraud in the party who obtains it."

Grignons Lessee *vs.* Astor, 2 Howard 340.

6 Peters 729.

As the case of Grignons Lessee *vs.* Astor, 2 Howard 319, above referred to, is so directly in point, I desire to call the attention of the Court particularly thereto. That was a case brought by the heirs of Grignons against the purchasers, under an administrator's sale, in Michigan. The laws of Michigan required notice to be given to the heirs and parties interested, and also required certain facts to appear, before the Court could render the order of sale. There was no averment in the order of sale or evidence that any of the prerequisites required by law were

performed, and this Court, in its opinion, presents a clear and complete exposition of the law on all the points made in this case as to the validity of the decree. On page 338 the Court says, " on a proceeding to sell the real estate of an indebted intestate there are no adversary parties, the proceeding is *in rem*, the administrator represents the land (11 S. & R. 432) they are analogous to proceedings in admiralty, where the only question of jurisdiction is the power of the Court over the thing, the subject matter before them without regard to the persons who may have an interest in it, and all the world are parties. In the Orphans' Court and all Courts who have power to sell the estates of intestates, their action operates on the estate, not on the heirs of the intestate ; a purchaser claims not their title, but one paramount, 11 S. & R. 426. The estate passes to him by operation of law, 11 S. &. R. 428. The sale is a proceeding *in rem*, to which all claiming, under the intestate, are parties (11 S. & R. 429) which directs the title of the deceased, 11 S. & R. 430."

On page 340 the Court say, " after the Court has passed on the representation of the administrator the law presumes that it was accompanied by the certificate of the Judge of Probate, as that was a requisite to the action of the Court, their order of sale is evidence of that or any fact which was necessary to give them power to make it, and the same remark applies to the order to give notice to the parties. This is a familiar principle in ordinary adversary actions in which it is presumed after verdict that the plaintiff has proved every fact which is indispensable to his recovery, though no evidence appears on the record to show it, and the principle is of more universal application in proceedings *in rem* after a final decree by a Court of competent jurisdiction over the subject matter."

The Orphans' Courts are not required to enter on record the evidence in which they decided the necessary facts. "If it was so stated in terms on the face of the proceedings, and even if the

jurisdiction of the Court depended on that fact it is by no means clear that it would be permitted to contradict it on a direct proceeding to reverse any order or decree made by the Court. But to permit that fact to be drawn in question in this collateral way is certainly not warranted by any principle of law."

Thompson *vs.* Johnson, 2 Peters 165.

"If the purchaser (under a decree of the Orphans' Court) was responsible for their mistakes in point of fact after they adjudicated upon the facts and acted upon them, those sales would be snares for honest men."

2 Peters 169.

The purchaser is not bound to look further back than the order of the Court. He is not to see whether the Court were mistaken in the facts of debts and children. The decree of an Orphans' Court in a case within its jurisdiction is reversible on an appeal and not collaterally on another suit. A title under a license to the administrators to sell real estate is good against the heirs of the intestate, although the license was granted upon the certificate of the Judge of Probate, not warranted by the circumstances of the case.

2 Peters 169.
11 Mass. 227.

The following cases are also cited in the case in
2 Howard 342.
3 Peters 204, 205, 207.
1 Peters 340.
10 Peters 473.

In case of Rice *vs.* Parkman, 16 Mass. 326, the Court say: "we do not consider notice essential, if the fact be that none was given. The interests of the administrators are with the estate and not opposed to it." If necessary notice will be presumed.

The purchaser under sale was not bound to look farther than the decree of sale and the confirmation thereof by the Justice of the Supreme Court under said act—the sale being confirmed, his title was complete.

This decree was rendered in 1823, nearly forty years ago. The record in this case shows that the files and records of both the Circuit Court and of the Probate Court of that county cannot now be found; the building in which they were kept having been destroyed by fire, so that it is now impossible to show the proceedings in the case anterior to the decree. These facts, and also the loose manner in which the records were kept in the early days of the States, the Courts will take notice of.

Grignons Lesse *vs.* Astor, 2 Howard 339.

The sale was made in 1823, the deed was executed and approved by a Justice of the Supreme Court of the State of Illlnois, (the same Judge who rendered the decree), who, as appears from the records, first informed himself of the correctness of the transactions and that the sale was made for the full value of the land, the purchaser bought in good faith and soon thereafter took possession of the land, and he and his grantees have occupied the land ever since, and the land by change of circumstances and by the labor of the purchasers has greatly enhanced in value. During all this period the Crane heirs have stood by and permitted these persons to cultivate and improve the land and pay the taxes without a word of objection or of claim to the land. Nor is it contended that the purchaser did not pay all the land was worth at the time of purchase, nor that the estate of Crane did not receive the full benefit of the sale. The Courts will not disturb a sale after the lapse of so long a period, and where the rights of third persons have become established and so long acquiesced in, unless the decree be clearly and indisputably void, and especially in a collateral manner, and where there is no charge of fraud in the purchase, and that too in a suit

brought, not by the heirs, the parties claimed to have been injured, but by speculators who purchase the claims of these so-called abused individuals for a mere pittance. The Courts will not favor suits against the persons who have innocently purchased wild lands at a fair price, reclaimed the land, made improvements, and by their labor made the land valuable, and who have occupied the lands twenty or thirty years, without any adverse claim.

It is said that the administrators who made the sale "were strangers to the estate, that they took no oath and gave no bonds or security for the faithful discharge of their duties." This is not true in fact. Beck and O'Hara were the administrators of Crane's estate at the time of the passage of the act of 1821, they both died soon thereafter and in November, 1821, Clemsen and Smith were duly appointed administrators of the estate of said Crane, and at the same time were also appointed administrators of the estates of said Beck and O'Hara, and as such administrators gave the bonds required and entered upon their duties as such administrators. It is true that in the act of 1823 they are described as the administrators of Beck and O'Hara. But this description does not change the character of the persons, it is merely *descriptio personae.* Clemsen and Smith were the administrators of Crane and as such made the sale.

It is also contended that these special acts were repealed by the general act approved at the same session of the passage of said supplemental act, but approved a few days later. It was clearly not the intention of the Legislature to repeal the private acts. The one was a private and the other a public act, and passed at the same session. But even if the general law of 1823 was in force, the sale would be valid, that law providing that if any executors or administrators should sell real estate contrary to the provisions of said act, he or they should forfeit and pay the sum of five hundred dollars, and the title, provided the purchaser bought in good faith, would go to the purchaser.

There is, however, one other consideration which would seem to be a complete bar to this action.

The record shows that the defendant and those through whom he claims had been in the undisturbed possession of the land for more than twenty years before suit, and their is no disability shown on part of plaintiff or his grantors. It is true some of the grantors of plaintiff have shown to have been married women from the time the statutes of limitation commenced running, and so continued to the time of the commencement of this suit. This Court has decided when the estate of the husband is not determined, the statutes of limitation form a complete bar to an action brought by the wife or her grantor during coverture.

Gregg *vs.* Tesson, 1 Black 150.

A. L. MERRIMAN,
Attorney for Defendant in Error.

In relation to the right of the Legislature to enact laws providing a remedy in particular cases where the rights of the parties may be determined by the courts, I beg leave to refer to the following additional authorities,

Calder vs. Bull, 3 Dallas 386.
Mason vs. Haile, 12 Wheaton 378.
Wilkinson vs. Leland, 2 Peters 628-654.
Kirby vs. Chitwood Heirs, 4 Monroe 91.
Shehan Heirs vs. Barnett Heirs, 6 do. 592.
Hope vs. Johnson, 2 Yerger 123.
Vanzandt vs. Waddell, 2 do. 260.

Also in 10 Yerger 78, cited by the plaintiff the foregoing cases in 2d Yerger are commented upon and approved.

The above cases fully establish the principle that when it is clearly shown by the proper authority that the facts exist establishing the right, the Legislature has the power to enact private laws directing the manner of enforcing such right.

A. L. MERRIMAN.